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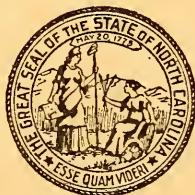


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PHARMACY LAWS *of* NORTH CAROLINA

A COMPILATION OF STATE AND FEDERAL LAWS
WITH REGULATIONS
GOVERNING THE PRACTICE OF PHARMACY
AND
GENERAL DRUG STORE OPERATION



Published by

*The North Carolina Board of Pharmacy
Chapel Hill, North Carolina*

Compiled by

FREDERICK O. BOWMAN

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*Chapel Hill, North Carolina
August 1, 1946*

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*Chapel Hill, North Carolina
August 1, 1946*

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P R E F A C E

The purpose of this compilation is to make available to the pharmacists and retail druggists in ready reference form the State and Federal Statutes, together with the Regulations governing the practice of Pharmacy and general drug store operation in North Carolina.

The simplified plan of classification employed is to enable the pharmacist to become familiar with the most important laws and regulations relating to his profession and business without having to delve tediously into complicated statute books.

The work involved in this compilation will be justified if it fulfills in some measure the intended purpose to make the laws so plain and understandable for pharmacists that legal compilation will be avoided.

Acknowledgment is made to Mr. H. C. McAllister, Secretary-Treasurer, North Carolina Board of Pharmacy, for his timely suggestions and valuable assistance.

FREDERICK O. BOWMAN



NOTICE—This booklet should be preserved. From time to time supplements will be issued covering amendments to the laws contained herein, the addition of new laws, and future regulations promulgated pertaining to each.

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PART ONE

STATE LAWS

CHAPTER I

Practice of Pharmacy

SECTION 90-53. *North Carolina Pharmaceutical Association.*—The North Carolina Pharmaceutical Association, and the persons composing the same, shall continue to be a body politic and corporate under the name and style of the North Carolina Pharmaceutical Association, and by said name have the right to sue and be sued, to plead and be impleaded, to purchase and hold real estate and grant the same, to have and to use a common seal, and to do such other things and perform such other acts as appertain to bodies corporate and politic not inconsistent with the constitution and laws of the state.

(Rev., s. 4471; Code, s. 3135; 188, c. 355, s. 1; C. S. 6650.)

SEC. 90-54. *Object of Pharmaceutical Association.*—The object of the association is to unite the pharmacists and druggists of this state for mutual aid, encouragement, and improvement; to encourage scientific research, develop pharmaceutical talent, to elevate the standard of professional thought, and ultimately restrict the practice of pharmacy to properly qualified druggists and apothecaries.

(Rev., s. 4472; Code, s. 3136; 1881, c. 355, s. 2; C. S. 6651.)

SEC. 90-55. *Board of Pharmacy; Election; Terms; Vacancies.*—The Board of Pharmacy shall consist of five persons licensed as pharmacists within this state, who shall be elected and commissioned by the governor as hereinafter provided. The members of the present Board of Pharmacy shall continue in office until the expiration of their respective terms, and the rules, regulations, and by-laws of said board, so far as they are not inconsistent with the provisions of this article, shall continue in effect. The North Carolina Pharmaceutical Association shall annually elect a resident pharmacist from its number to fill the vacancy annually occurring in said board, and the pharmacist so elected shall be commissioned by the governor and shall hold office for the term of five years and until his successor has been duly elected and qualified. In the case of death, resignation, or removal from the state of any member of said Board of Pharmacy, the said board shall elect in his place a pharmacist who is a member of said North Carolina Pharmaceutical Association, who shall be commissioned by the governor as a member of the said Board of Pharmacy for the remainder of the term. It shall be the duty of a member of the Board of Pharmacy, within ten days after receipt of notification of his appointment and commission, to appear before the clerk of the superior court of the county in which he resides and take and subscribe an oath to properly and faithfully discharge the duties of his office according to law.

(Rev., s. 4473; 1905, c. 108, ss. 5-7; C. S. 6652.)

SEC. 90-56. *Election of Officers; Bonds; Annual Meetings.*—The Board of Pharmacy shall elect two officers, a president and a secretary-treasurer,

who shall hold their offices until their successors shall have been elected and qualified. The president shall be elected from the membership of the board. The secretary-treasurer may or may not be a member of the board, as the board shall determine. The secretary-treasurer shall give bond in such sum as may be prescribed by the board, conditioned for the faithful discharge of the duties of his office according to law, and said bond shall be made payable to the North Carolina Board of Pharmacy and approved by said board. The said board shall hold an annual meeting at such time and place as it may provide by rule for the examination of candidates and for the discharge of such other business as may legally come before it, and said board may hold such additional meetings as may be necessary for the examination of candidates and for the discharge of any other business.

(Rev., s. 4474; 1905, c. 108, s. 8; 1923, c. 82; C. S. 6653.)

SEC. 90-57. *Powers of Board; Reports; Quorum; Records.*—The Board of Pharmacy shall have a common seal, and shall have the power and authority to define and designate nonpoisonous domestic remedies, to adopt such rules, regulations, and by-laws, not inconsistent with this article, as may be necessary for the regulation of its proceedings and for the discharge of the duties imposed under this article, and shall have power and authority to employ an attorney to conduct prosecutions and to assist in the conduct of prosecutions under this article, and for any other purposes which said board may deem necessary. The said Board of Pharmacy shall keep a record of its proceedings and a register of all persons to whom certificates of license as pharmacists and permits have been issued, and of all renewals thereof; and the books and register of the said board, or a copy of any part thereof, certified by the secretary, attested by the seal of said board, shall be taken and accepted as competent evidence in all the courts of the state. The said Board of Pharmacy shall make annually to the governor and to the North Carolina Pharmaceutical Association written reports of its proceedings and of its receipts and disbursements under this article, and of all persons licensed to practice as pharmacists in this state. A majority of the board shall constitute a quorum for the transaction of all business.

(Rev., s. 4475; 1905, c. 108, s. 9; 1907, c. 113, s. 1; C. S. 6654.)

SEC. 90-58. *Compensation of Secretary and Board.*—The secretary of the Board of Pharmacy shall receive such salary as may be prescribed by the board, and shall be paid his necessary expenses while engaged in the performance of his official duties. The other members of the said board shall receive the sum of ten dollars for each day actually employed in the discharge of their official duty and their necessary expenses while engaged therein: *Provided*, that the compensation and expenses of the secretary and members of the said Board of Pharmacy and all disbursements for expenses incurred by the said board in carrying into effect and executing the provisions of this article shall be paid out of the fees received by the said board.

(Rev., s. 4476; 1905, c. 108, s. 10; 1921, c. 57, s. 2; C. S. 6655.)

SEC. 90-59. *Secretary to Investigate and Prosecute.*—Upon information that any provision of this article has been or is being violated by any mem-

ber, the secretary of the Board of Pharmacy or any one appointed by the said Board of Pharmacy shall promptly make investigations of such matters, and, upon probable cause appearing, shall file complaint and prosecute the offender. All fines and penalties prescribed in this article shall be recoverable by suit in the name of the people of the state. In all prosecutions for the violation of any of the provisions of this article, a certificate under oath by the secretary of the Board of Pharmacy shall be competent and admissible as evidence in any court of the state that the person so charged with the violation of this article is not a registered pharmacist or assistant pharmacist, as required by law.

(Rev., s. 4477; 1905, c. 108, s. 11; 1923, c. 74, s. 1; C. S. 6656.)

SEC. 90-60. *Fees Collectible by Board.*—The Board of Pharmacy shall be entitled to charge and collect the following fees: For the examination of an applicant for license as a pharmacist ten dollars; for renewing the license as a pharmacist or an assistant pharmacist, five dollars; for licenses without examination as provided in Section ninety-sixty-four original twenty-five dollars (\$25.00) and renewal thereof five dollars (\$5.00); for original registration of a drug store twenty-five dollars (\$25.00) and renewal thereof ten dollars (\$10.00); for issuing a permit to a physician to conduct a drug store in a village of not more than five hundred inhabitants, ten dollars; for the renewal of permit to a physician to conduct a drug store in a village of not more than five hundred inhabitants, five dollars. All fees shall be paid before any applicant may be admitted to examination or his name placed upon the register of pharmacists or before any license or permit, or any renewal thereof, may be issued by the board.

(Rev., s. 4478; 1905, c. 108, s. 12; 1921, c. 57, s. 3; C. S. 6657; 1945, c. 572.)

SEC. 90-61. *Application and Examination for License, Prerequisites.*—Every person licensed or registered as a pharmacist on February 4, 1905, under the laws of this state shall be entitled to continue in the practice of his profession until the expiration of the term for which his certificate of registration or license was issued. Every person who shall desire to be licensed as a pharmacist shall file with the secretary of the Board of Pharmacy an application, duly verified under oath, setting forth the name and age of the applicant, the place or places at which and the time he has spent in the study of the science and art of pharmacy, the experience in the compounding of physicians' prescriptions which the applicant has had under the direction of a legally licensed pharmacist, and such applicant shall appear at a time and place designated by the Board of Pharmacy and submit to an examination as to his qualifications for registration as a licensed pharmacist. The application referred to above shall be prepared and furnished by the Board of Pharmacy.

In order to become licensed as a pharmacist, within the meaning of this article, an applicant shall be not less than twenty-one years of age, he shall present to the Board of Pharmacy satisfactory evidence that he has had

four years experience¹ in pharmacy under the instruction of a licensed pharmacist, and that he is a graduate of a reputable school or college of pharmacy,² and he shall also pass a satisfactory examination³ of the Board of Pharmacy: *Provided*, however, that the actual time of attendance at a reputable school or college of pharmacy, not to exceed three years, may be deducted from the time of experience required. *Provided, further*, that any person legally registered or licensed as a pharmacist by another state board of pharmacy, and who has had fifteen years continuous experience in North Carolina under the instruction of a licensed pharmacist next preceding his application shall be permitted to stand the examination to practice pharmacy in North Carolina upon application filed with said board. Any person who has had two years of college training and has been filling prescriptions in a drug store or stores for twenty years or longer may take the examination as provided in the above proviso.

(Rev., s. 4479, 4480; 1905, c. 108, s. 13; 1915, c. 165; 1921, c. 52; 1933, c. 206, ss. 1, 2; 1935, c. 181; 1937, c. 94; C.S. 6658.)

SEC. 90-62. *When License Issued.*—If an applicant for license as pharmacist has complied with all the requirements of Sections 90-60 and 90-61, the Board of Pharmacy shall enroll his name upon the register of pharmacists and issue to him a license, which shall entitle him to practice as a pharmacist up to the first day of January next ensuing, as provided in this article for the annual renewal of every registration.

Rev., s. 4481; 1905, c. 108, s. 15; 1921, c. 68, s. 1; C.S. 6659.)

SEC. 90-63. *Certain Assistant Pharmacists May Take Registered Pharmacist's Examination; No Original Assistant Certificates Issued After January 1, 1939.*—Every person who is the holder of a certificate as a registered assistant pharmacist, issued prior to January first, one thousand nine hundred and thirty-nine, shall be admitted to the registered pharmacist examination. After January first, one thousand nine hundred and thirty-nine, the board shall not issue an original certificate to any person as a registered assistant pharmacist: *Provided, however*, that nothing in this section shall prevent any person who was registered as an assistant pharmacist prior to January first, one thousand nine hundred and thirty-nine, from continuing to practice as a registered assistant pharmacist.

(1937, c. 402.)

1EXPERIENCE GAINED WHILE SERVING WITH THE ARMED FORCES

"Experience in pharmacy gained while serving in the Armed Forces shall be deemed as fulfilling the requirements of the North Carolina Pharmacy Law as related to experience requirements for registration only when such experience was obtained under the supervision of a licensed pharmacist and consisted of compounding physicians' prescriptions and pharmaceutical preparations; and in dispensing the same and such other drugs, chemicals, and poisons as are commonly compounded and dispensed in a Pharmacy (or hospital). *Provided*, such experience is certified by such agency who is authorized to make this certification.

Experience gained in such nonpharmaceutical work as nursing, first aid, pathological laboratory, X-ray, and so forth, shall not be deemed as fulfilling said requirement."

2DEFINITION OF A REPUTABLE SCHOOL OR COLLEGE OF PHARMACY

"A Reputable School or College of Pharmacy is held to be: a School of Pharmacy whose physical equipment, course of instruction, and teaching personnel conforms to the standards and specifications or the equivalent thereof required by the American Council on Pharmaceutical Education for Accreditation."

³ See Appendix.

SEC. 90-64. *When License Without Examination Issued.*—The Board of Pharmacy may issue licenses to practice as pharmacists in this state, without examination, to such persons as have been legally registered or licensed as pharmacists by other boards of pharmacy, if the applicant for such license shall present satisfactory evidence⁴ of the same qualifications as are required from licentiates in this state, and that he was registered or licensed by examination by such other board of pharmacy, and that the standard of competence required by such board of pharmacy is not lower than that required in this state. All applicants for license under this section shall, with their application, forward to the secretary of the Board of Pharmacy the same fees as are required of other candidates for license.

(Rev., s. 4482; 1905, c. 108, s. 16; C.S. 6660.)

SEC. 90-65. *When License Refused or Revoked; Fraud.*—The Board of Pharmacy may refuse to grant a license to any person guilty of felony or gross immorality, or who is addicted to the use of alcoholic liquors or narcotic drugs to such an extent as to render him unfit to practice pharmacy; and the Board of Pharmacy may, after due notice and hearing, revoke a license for like cause, or any license which has been procured by fraud. Any license or permit, or renewal thereof, obtained through fraud or by any fraudulent or false representations shall be void and of no effect in law.

(Rev., s. 4483; 1905, c. 108, ss. 17, 25; C.S. 6661.)

SEC. 90-66. *Expiration and Renewal of License; Failure to Renew Misdemeanor.*—Every licensed pharmacist or assistant pharmacist who desires to continue in the practice of his profession, and every physician holding a permit to sell drugs in a village of not more than six hundred inhabitants, shall within thirty days next preceding the expiration of his license or permit, file with the secretary and treasurer of the Board of Pharmacy an application for the renewal thereof, which application shall be accompanied by the fee hereinbefore prescribed. If the Board of Pharmacy shall find that an applicant has been legally licensed in this state, and is entitled to a renewal thereof, or to a renewal of a permit, it shall issue to him a certificate attesting that fact. And if any pharmacist or assistant pharmacist shall fail, for a period of sixty days after the expiration of his license, to make application to the board for its renewal, his name shall be erased from the register of licensed pharmacists and assistant pharmacists and such person, in order to again become registered as a licensed pharmacist or assistant pharmacist shall be required to pay the same fee as in the case of original registration. And if any holder of a permit to sell drugs in a village of not more than six hundred inhabitants shall fail, for a period of sixty days after expiration of his permit, to make application for the renewal thereof, his name shall be erased from the register of persons holding such permits, and he may be restored thereto only upon payment of the fee required for the granting of original permit. The registration of every license and every permit issued by the board shall expire on the thirty-first day of December next ensuing the granting thereof: *Provided*, that the Board of Pharmacy, in its discretion, shall have the power to issue

⁴ See Appendix.

a license or permit, or renewals thereof, to any person whose license or permit has been revoked by operation of law or by the Board of Pharmacy, or whose renewal thereof has been refused by the Board of Pharmacy, after the expiration of one year from the date of such revocation of license or permit, or refusal of a renewal thereof, upon satisfactory proof that such person is entitled to such license or permit, or to a renewal thereof.

Every holder of a license or permit as a pharmacist or assistant pharmacist, who after the expiration thereof continues to carry on the business for which the license or permit was granted, without renewing the same as required by this section, shall be guilty of a misdemeanor, and fined not less than five nor more than twenty-five dollars.

(Rev., ss. 3653, 4484; 1905, c. 108, ss. 18, 19, 27; 1911, c. 48; 1921, c. 68, s. 2; C.S. 6662.)

SEC. 90-67. *License To Be Displayed; Penalty.*—Every certificate or license to practice as a pharmacist or assistant pharmacist and every permit to a practicing physician to conduct a pharmacy or drug store in a village of not more than six hundred inhabitants, and every last renewal of such license or permit, shall be conspicuously exposed in the pharmacy or drug store or place of business of which the pharmacist, or other person to whom it is issued, is the owner or manager, or in which he is employed.

The holder of such license, permit, or renewal who fails to expose it as required by this section shall be guilty of a misdemeanor, and fined not less than five nor more than twenty-five dollars, and each day that such license, permit, or renewal thereof shall not be exposed shall be held to constitute a separate and distinct offense.

(Rev., ss. 3651, 4485; 1905, c. 108, ss. 18, 26; 1921, c. 68, s. 3; C.S. 6663.)

SEC. 90-68. *Unlicensed Person Not To Use Title of Pharmacist; Penalty.*—It shall be unlawful for any person not legally licensed as a pharmacist or assistant pharmacist to take, use or exhibit the title of pharmacist or assistant pharmacist or licensed or registered pharmacist, or the title drug-gist or apothecary, or any other title, name, or description of like import.

Every person who violates this section shall be guilty of a misdemeanor and be fined not less than twenty-five nor more than one hundred dollars.

(Rev., ss. 3652, 4486; 1905, c. 108, ss. 22, 29; 1921, c. 68, s. 4; C.S. 6664.)

SEC. 90-69. *Purity of Drugs Protected; Seller Responsible; Adulteration Misdemeanor.*—Every person who shall engage in the sale of drugs, chemicals, and medicines shall be held responsible for the quality of all drugs, chemicals, and medicines he may sell or dispense, with the exception of those sold in the original packages of the manufacturers, and also those known as "patent or proprietary medicines."

If any person engaged in the sale of drugs, chemicals, and medicines shall intentionally adulterate, or cause to be adulterated or expose to sale knowing the same to be adulterated, any drugs, chemicals, or medical preparations, he shall be guilty of a misdemeanor and liable to a fine not exceeding one hundred dollars, and if he is a licensed pharmacist or assistant phar-

macist his name shall be stricken from the register of licensed pharmacists and assistant pharmacists.

(Rev., ss. 3648, 4488; Code, s. 3145; 1881, c. 355, s. 11; 1897, c. 182, s. 7; 1905, c. 108, s. 3; 1921, c. 68, s. 5; C.S. 6665.)

SEC. 90-70. *Prescriptions Preserved; Copies Furnished.*—Every proprietor or manager of a drug store or pharmacy shall keep in his place of business a suitable book or file, in which shall be preserved for a period of not less than five years the original of every prescription compounded or dispensed at such drug store or pharmacy. Upon the request of the prescribing physician, or of the person for whom such prescription was compounded or dispensed, the proprietor or manager of such drug store or pharmacy shall furnish a true and correct copy of such prescription, and said book or file of original prescriptions shall at all times be open to the inspection and examination of duly authorized officers of the law or other persons authorized and directed by the Board of Pharmacy to make such inspection and examination.

(Rev., s. 4490; 1905, c. 108, s. 21; C.S. 6666.)

SEC. 90-71. *Selling Drugs Without License Prohibited; Drug Trade Regulated.*—It shall be unlawful for any person not licensed as a pharmacist or assistant pharmacist within the meaning of this article to conduct or manage any pharmacy, drug or chemical store, apothecary shop or other place of business for the retailing, compounding, or dispensing of any drugs, chemicals, or poison, or for the compounding of physicians' prescriptions, or to keep exposed for sale at retail any drugs, chemicals, or poisons, except as hereinafter provided, or for any person not licensed as a pharmacist within the meaning of this article to compound, dispense, or sell at retail any drug, chemical, poison, or pharmaceutical preparation upon the prescription of a physician or otherwise, or to compound physicians' prescriptions except as an aid to and under the immediate supervision of a person licensed as a pharmacist or assistant pharmacist under this article. *Provided*, that during the temporary absence⁵ of the licensed pharmacist in charge of the pharmacy, drug or chemical store, a licensed assistant pharmacist may conduct or have charge of said store. And it shall be unlawful for any owner or manager of a pharmacy or drug store or other place of business to cause or permit any other than a person licensed as a pharmacist or assistant pharmacist to compound, dispense, or sell at retail any drug, medicine, or poison, except as an aid to and under the immediate supervision of a person licensed as a pharmacist or assistant pharmacist.

Nothing in this section shall be construed to interfere with any legally registered practitioner of medicine in the compounding of his own prescriptions, nor with the exclusively wholesale business of any dealer who shall be licensed as a pharmacist or who shall keep in his employ at least one

⁵TEMPORARY ABSENCE

The term "temporary absence" in the Pharmacy Act shall be held to mean that interval during the period the store is open for business, when the registered manager is out of the store but within call and ready to assume direct supervision of said pharmacy.

The qualified assistant pharmacist may have charge of a retail drug store during such temporary absence of the registered pharmacist, and exercise his right to do what the law and certificate confer upon him.

November 28, 29, and 30, 1933.

person who is licensed as a pharmacist, nor with the selling at retail of non-poisonous domestic remedies,⁶ nor with the sale of patent or proprietary preparations which do not contain poisonous ingredients, nor, except in cities and towns wherein there is located an established drug store, and except in the counties of Avery, Bertie, Cleveland, Cabarrus, Cumberland, Duplin, Forsyth, Gaston, Guilford, Halifax, Harnett, Iredell, Henderson, Mecklenburg, Montgomery, Nash, Pender, Moore, New Hanover, Orange, Richmond, Rockingham, Robeson, Rowan Scotland, and Wilson, shall this section be construed to interfere with the sale of paregoric, Godfrey's cordial, Aspirin, alum, borax, bicarbonate of soda, calomel tablets, castor oil, compound carthartic pills, copperas, cough remedies which contain no poison or narcotic drugs, cream of tartar, distilled extract witch hazel, epsom salts, harlem oil, gum asafetida, gum camphor, glycerin, peroxide of hydrogen, petroleum jelly, saltpetre, spirit of turpentine, spirit of camphor, sweet oil, and sulphate of quinine, nor with the sale of poisonous substances which are sold exclusively for use in the arts or for use as insecticides when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word "Poison," the vignette of the skull and crossbones, and the name of at least two readily obtainable antidotes.

In any village of not more than six hundred inhabitants the board of pharmacy may, after due investigation, grant any legally registered practicing physician a permit to conduct a drug store or pharmacy in such village, which permit shall not be valid in any other village than the one for which it was granted, and shall cease and terminate when the population of the village for which such permit was granted shall become greater than six hundred.

(Rev., s. 4487; 1905, c. 108, s. 4; 1921, cl 68, s. 6; Ex. Sess. 1924, c. 116; C.S. 6667.)

SEC. 90-72. *Compounding Prescriptions Without a License.*—If any person, not being listed as a pharmacist or assistant pharmacist, shall compound, dispense, or sell at retail any drug, medicine, poison, or pharmaceutical preparation, either upon a physician's prescription, or otherwise, and if any person being the owner or manager of a drug store, pharmacy, or other place of business, shall cause or permit any one not licensed as a pharmacist or assistant pharmacist to dispense, sell at retail, or compound any drug, medicine, poison, or physician's prescription contrary to the provisions of this article, he shall be deemed guilty of a misdemeanor, and fined not less than twenty-five nor more than one hundred dollars.

(Rev., s. 3649; 1905, c. 108, s. 24; 1921, c. 68, s. 7; C.S. 6668.)

*** NON-POISONOUS DOMESTIC REMEDIES SHALL BE HELD TO INCLUDE:**

Alum	Cream of Tartar	Peroxide of Hydrogen
Aromatic Spirit of Ammonia	Dist. Ext. Witch Hazel	Petroleum Jelly
Borax	Epsom Salt	Saltpetre
Bicarb. of Soda	Harlem Oil	Senna Leaves
Calomel Tablets	Gum Asafetida	Spirit of Turpentine
Castor Oil	Gum Camphor	Spirit of Camphor
Comp. Carth. Pills	Glycerin	Sweet Oil
Copperas	Mineral Oil	Sulphate of Quinine
Cough remedies which contain no poison or narcotic drugs.		Sulphur

Exempt narcotic preparations, provided the dealer is registered under the Harrison Narcotic Law.

SEC. 90-73. *Conducting Pharmacy Without a License.*—If any person, not being licensed as a pharmacist, shall conduct or manage any drug store, pharmacy, or other place of business for the compounding, dispensing, or sale at retail of any drugs, medicines, or poisons, or for the compounding of physicians' prescriptions contrary to the provisions of this article, he shall be deemed guilty of a misdemeanor, and be fined not less than twenty-five nor more than one hundred dollars, and each week such drug store or pharmacy or other place of business is so unlawfully conducted shall be held to constitute a separate and distinct offense.

(Rev., s. 3650; 1905, c. 108, s. 23; C.S. 6669.)

SEC. 90-74. *Pharmacist Obtaining License Fraudulently.*—If any person shall make any fraudulent or false representations for the purpose of procuring a license or permit, or renewal thereof, either for himself or for another, he shall be guilty of a misdemeanor, and fined not less than twenty-five nor more than one hundred dollars; and if any person shall willfully make a false affidavit or any other false or fraudulent representation for the purpose of procuring a license or permit, or renewal thereof, either for himself or for another, he shall be deemed guilty of perjury, and upon conviction thereof shall be subject to like punishment as is now prescribed for the crime of perjury.

(Rev., s. 3654; 1905, c. 108, s. 25; C.S. 6670.)

SEC. 90-75. *Registration of Drug Stores and Pharmacies.*⁷—The Board of Pharmacy shall require and provide for the annual registration of every drug store and pharmacy doing business in this State; the proprietor of every drug store and pharmacy opening for business after January 1, 1928 shall apply to the Board of Pharmacy for registration and it shall be unlawful for any drug store or pharmacy to do business until so registered;⁸ the fee for such registration, whether original⁹ or annual, shall be one dollar (\$1), and upon payment thereof the Board of Pharmacy shall issue permit to applicant entitled to receive same. All permits issued under this section shall expire on December thirty-first of each year.

The terms "drug store" and "pharmacy" as used herein shall mean any store or other place in which drugs, medicines, chemicals, poisons, or prescriptions are compounded, dispensed, or sold at retail, or which uses the title "drug store," "pharmacy" or "apothecary" or any combination of such

⁷ Public Laws 1945, Chapter 572, amending Section 90-60, supercedes the one (\$1.00) dollar fee for drug store registration and provides the following fees: For original registration of a drug store, \$25.00 and renewal thereof, \$10.00.

⁸ RESOLUTION PERTAINING TO REGISTRATION OF DRUG STORES

BE IT RESOLVED that the Board of Pharmacy will not issue any original drug store permit to a new drug store until an investigation shall completely satisfy the Board that:

1. Adequate qualified personnel can be secured by the management of the store to properly render pharmaceutical service in the manner prescribed by the law; and
2. That such personnel can be maintained for that period for which the permit is issued.

⁹ DEFINITION OF "ORIGINAL" AND "RENEWAL" DRUG STORE PERMIT

"An Original Drug Store Permit shall be held to be a permit issued for:

1. A new business.
 2. Transfer of an established business to a successor.
 3. Transfer of more than 50% of the ownership of an established business to a successor.
- A drug store permit issued under all other conditions shall be considered as a renewal."

titles, or any title or description of like import: *Provided*, that nothing in this section shall apply to the sale of domestic remedies, patent and proprietary preparations, and insecticides as set out and provided for in paragraph two of section 90-71.

(1927, c. 28, s. 1.)

SEC. 90-76. *Substitution of Drugs, Etc., Prohibited.*—Any person or corporation engaged in the business of selling drugs, medicines, chemicals, or preparations for medical use or of compounding or dispensing physicians' prescriptions, who shall, in person or by his or its agents or employees, or as agent or employee of some other person, knowingly sell or deliver to any person a drug, medicine, chemical preparation for medical use, recognized or authorized by the latest edition of the United States Pharmacopoeia and National Formulary, or prepared according to the private formula of some individual or firm, other or different from the drug, medicine, chemical or preparation for medicinal use, recognized or authorized by the latest edition of the United States Pharmacopoeia and National Formulary, or prepared according to the private formula of some individual or firm, ordered or called for by such person, or called for in a physician's prescription, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine or imprisonment, or both, at the discretion of the court: *Provided*, that this section shall apply to registered drug stores and their employees only.

(1937, c. 59.)

CHAPTER II

DEALING IN SPECIFIC DRUGS REGULATED

(1) Poison Law

SECTION 90-77. *Poisons; Sales Regulated; Label; Penalties.*—It shall be unlawful for any person to sell or deliver to any person any of the following described substances or any poisonous compound, combination, or preparation thereof, to wit: The compounds and salts of arsenic, antimony, lead, mercury, silver and zinc, oxalic and hydrocyanic acids and their salts, the concentrated mineral acids, carbolic acid, the essential oils of almonds, pennyroyal, tansy and savine, croton oil, creosote, chloroform, chloral hydrate, cantharides, or any aconite, belladonna, bitter almonds, colchicum, cotton root, conium, cannabis indica, digitalis, hyoscyamus, nuxvomica, opium, ergot, cannabis stramonius, or any of the poisonous alkaloids or alkaloidal salts or other poisonous principles derived from the foregoing, or cocaine or any other poisonous alkaloids or their salts, or any other virulent poisons, except in the manner following: It shall be learned by due inquiry that the person to whom delivery is made is aware of the poisonous character of the substance, and that it is desired for a lawful purpose, and the box, bottle, or other package shall be plainly labeled with the name of the substance, the word "Poison," and the name of the person or firm dispensing the substance.

Before a delivery is made of any of the following substances, to wit, the compounds and salts of arsenic, antimony and mercury, hydrocyanic acid and its salts, strychnine and its salts, and the essential oil of bitter almonds, there shall be recorded in a book kept for the purpose the name of the article, the quantity delivered, the purpose for which it is required as represented by the purchaser, the date of delivery, the name and address of the purchaser, the name of the dispenser, which book shall be preserved for at least five years and shall at all times be open to the inspection of the proper officers of the law: *Provided*, that the foregoing provision shall not apply to articles dispensed upon the order of persons believed by the dispenser to be lawfully authorized practitioners of medicine or dentistry: *Provided, also*, that the record of sale and delivery above mentioned shall not be required of manufacturers and wholesalers who shall sell any of the foregoing substances at wholesale; but the box, bottle, or other package containing such substances, when sold at wholesale, shall be properly labeled with the name of the substance, the word "Poison," and the name and address of the manufacturer or wholesaler: *Provided further*, that it shall not be necessary to place a poison label upon, or to record the delivery of, the sulphide of antimony or the dioxide or carbonate of zinc or lead, or of colors ground in oil and intended for use as paint, or paris green, when dispensed in the original package of the manufacturer or wholesaler, or calomel, paregoric, or other preparations of opium containing less than two grains of opium to the fluid ounce, nor in the case of preparations containing any of the substances named in this section when in a single box, bottle,

or other package, or when the bulk of two fluid ounces or the weight of two avoirdupois ounces does not contain more than an adult medicinal dose of such poisonous substance.

If any person shall sell or deliver to any person any poisonous substance specified in this section without labeling the same and recording the delivery thereof in the manner prescribed, he shall be guilty of a misdemeanor, and fined not less than twenty-five nor more than one hundred dollars.

(Rev., ss. 3655, 4489; 1905, c. 108, ss. 20, 28; C.S. 6671.)

(2) Uniform Narcotic Drug Act

SECTION 90-86. *Title of Article.*—This article may be cited as the Uniform Narcotic Drug Act.

(1935, c. 477, s. 26.)

SEC. 90-87. *Definitions.*—The following words and phrases as used in this article shall have the following meanings unless the context otherwise requires:

(a) "Person includes any corporation, association, co-partnership or one or more individuals.

(b) "Physician" means any person authorized by law to practice medicine in this State and any other person authorized by law to treat sick and injured human beings in this State and to use narcotic drugs in connection with such treatment.

(c) "Dentist" means any person authorized by law to practice dentistry in this State.

(d) "Veterinarian" means any person authorized by law to practice veterinary in this State.

(e) "Manufacturer" means a person who by compounding, mixing, cultivating, growing or other process produces or prepares narcotic drugs, but does not include a pharmacist who compounds narcotic drugs to be sold or dispensed on prescription.

(f) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced or prepared, on official written order, but not on prescription.

(g) "Pharmacist" means a registered pharmacist of this State.

(h) "Pharmacy owner" means the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a registered pharmacist; but nothing in this article contained shall be construed as conferring on a person who is not registered or licensed as a pharmacist any authority, right or privilege that is not granted to him by the pharmacy laws of this State.

(i) "Hospital" means an institution for the care and treatment of the sick and injured, approved by the state Board of Pharmacy as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist or veterinarian.

(j) "Laboratory" means a laboratory to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific, experimental and medical purposes and for purposes of instruction approved by the state Board of Pharmacy.

(k) "Sale" includes barter, exchange or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee.

(l) "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthesized or made.

(m) "Opium" includes morphine, codeine, and herion and any compound, manufacture, salt, derivative, mixture, or preparation of opium.

(n) "Cannabis" includes the following substances under whatever means they may be designated:

(1) The dried flowering or fruiting tops of the pistillate plant *cannabis sativa* L. from which the resin has not been extracted;

(2) The resin extracted from such tops; and

(3) Every compound, manufacture, salt, derivative, mixture, or preparation of such resin or of such tops from which the resin has not been extracted; and

(4) Peyote or marahuanna.

(o) "Narcotic Drugs" means coca leaves, opium, cannabis, and every substance not chemically distinguishable from them.

(p) "Federal narcotic law" means the laws of the United States relating to opium, coca leaves and other narcotic drugs.

(q) "Official written order" means an order written on a form provided for that purpose by the United States Commissioner of Narcotics, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law.

(r) "Dispense" includes distribute, leave with, give away, dispose of or deliver.

(s) "Registry number" means the number assigned to each person registered under the federal narcotic laws.

(1935, c. 477, s. 1.)

SEC. 90-88. *Manufacture, Sale, Etc., of Narcotic Drugs Regulated.*—It shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this article.

(1935, c. 477, s. 2.)

SEC. 90-89. *Conditions of Sale of Drugs.*—A duly licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons but only on official written orders:

(a) To a manufacturer, wholesaler, pharmacist or pharmacy owner.

(b) To a physician, dentist or veterinarian.

(c) To a person in charge of a hospital, but only for use by or in that hospital.

(d) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medicinal purposes.

A duly licensed manufacturer or wholesaler may sell narcotic drugs to any of the following persons:

(a) On a special written order accompanied by a certificate of exemption, as required by the federal narcotic laws, to a person in the employ of the United States government or of any state, territory, district, county, municipality, or insular government, purchasing, receiving, possessing or dispensing narcotic drugs by reason of his official duties.

(b) To a master of a ship or a person in charge of any air craft upon which no physician is regularly employed for the actual medical needs of persons on board such ship or air craft when not in port, *provided* such narcotic drug shall be sold to the master of such ship or person in charge of such air craft only in pursuance of a special order form approved by a commanding medical officer or acting assistant surgeon of the United States Public Health Service.

(c) To a person in a foreign country if the provisions of the federal narcotic laws are complied with.

(1935, s. 477, s. 3.)

SEC. 90-90. *Execution of Written Orders; Use in Purchase; Preserving Copies for Inspection.*—An official written order for any narcotic drug shall be signed in duplicate by the person giving said order or by his duly authorized agent. The original shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein. In the event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two years, in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this article. It shall be deemed a compliance with this section if the parties to the transaction have complied with the federal narcotic laws respecting the requirements governing the use of order forms.

(1935, c. 477, s. 4.)

SEC. 90-91. *Lawful Possession of Drugs.*—Possession of or control of narcotic drugs obtained as authorized in this article shall be lawful if obtained in the regular course of business, occupation, profession, employment or duty of the possessor.

(1935, c. 477, s. 5.)

SEC. 90-92. *Dispensing of Drugs Regulated.*—A person in charge of a hospital or of a laboratory, or in the employ of this State or of any other state, or of any political subdivision thereof, and the master or other proper officer of a ship or air craft, who obtains narcotic drugs under the provisions of this article or otherwise shall not administer, nor dispense, nor otherwise use such drugs within this State except within the scope of his employment or official duty and then only for scientific or medicinal purposes and subject to the provisions of this article.

(1935, c. 477, s. 6.)

SEC. 90-93. *Sale of Drugs on Doctor's Prescription.*—A pharmacist in good faith may sell and dispense narcotic drugs to any person upon the written prescription of a physician, dentist, or veterinarian, provided it is properly executed, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom,

or of the owner of the animal for which, the drug is dispensed, and the full name, address and registry number under the federal narcotic laws of the person so prescribing if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed. A person filling the prescription shall write the date of filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years so as to be readily accessible for the inspection of any officers engaged in the enforcement of this article. The prescription shall not be refilled.

The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler, pharmacist or pharmacy owner but only upon an official written order.

A pharmacist, only upon an official written order, may sell to a physician, dentist or veterinarian in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than twenty per centum (20%) of the complete solution, to be used for medicinal purposes.

(1935, c. 477, s. 7.)

SEC. 90-94. *Prescribing, Administering or Dispensing by Physicians or Dentists.*—A physician or dentist, in good faith and in the course of his professional practice, only, may prescribe on a written prescription, administer, or dispense narcotic drugs or may cause the same to be administered by a nurse or interne under his direction and supervision. Such a prescription shall be dated and signed by the person prescribing on the day when issued and shall bear the full name and address of the patient for whom the narcotic drug is prescribed and the full name, address and registry number under the federal narcotic laws of the person prescribing, providing he is required by those laws to be so registered.

(1935, c. 477, s. 8.)

SEC. 90-95. *Prescribing, Administering or Dispensing by Veterinarians.*—A veterinarian, in good faith and in the course of his professional practice only not for use by a human being, may prescribe on a written prescription, administer and dispense narcotic drugs and he may cause them to be administered by an assistant or orderly under his direction and supervision. Such a prescription shall be dated and signed by the person prescribing on the day when issued and shall bear the full name and address of the owner of the animal, the species of the animal for which the narcotic drug is prescribed and the full name, address and registry number under the federal narcotic laws of the person prescribing, provided he is required by those laws to be so registered.

(1935, c. 477, s. 8.)

SEC. 90-96. *Returning Unused Portions of Drugs.*—Any person who has obtained from a physician, dentist or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist

or veterinarian shall return to such physician, dentist, or veterinarian any unused portion of such drug when it is no longer required by the patient.

(1935, c. 477, s. 8.)

SEC. 90-97. *Article Not Applicable in Certain Cases.*—Except as otherwise herein specifically provided, this article shall not apply to the following cases:

(1) Prescribing, administering, compounding, dispensing or selling at retail of any medicinal preparation that contains in one fluid ounce, or if a solid or semi-solid preparation, in one avoirdupois ounce, (a) not more than two grains of opium, (b) not more than one-quarter grain of morphine or of any of its salts, (c) not more than one grain of codeine, or of any of its salts, (d) not more than one-eighth of a grain of heroin or of any of its salts, (e) not more than one-half of a grain of extract of cannabis nor more than one-half of a grain of any more potent derivative or preparation of cannabis.

(2) Prescribing, administering, compounding, dispensing or selling at retail of liniments, ointments, and other preparations that are susceptible of external use only and that contain narcotic drugs in such combinations as prevent their being readily extracted from such liniments, ointments, or preparations, except that this article shall apply to all liniments, ointments, and other preparations that contain coca leaves in any quantity or combinations.

(3) The exemptions authorized by this section shall be subject to the following conditions:

(a) The medicinal preparation, or the liniment, ointment, or other preparation susceptible of external use only, prescribed, administered, dispensed, or sold, shall contain, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone.

(b) Such preparation shall be prescribed, administered, compounded, dispensed and sold in good faith as a medicine, and not for the purpose of evading the provisions of this article.

(4) Nothing in this section shall be construed to limit the kind and quantity of any narcotic drug that may be prescribed, administered, compounded, dispensed, or sold, to any person or for the use of any person or animal, when it is prescribed, administered, compounded, dispensed, or sold, in compliance with the general provisions of this article.

(1935, c. 477, s. 9.)

SEC. 90-98. *Records of Drugs Dispensed; Records of Manufacturers and Wholesalers; Records of Pharmacists; Written Orders Unnecessary for Certain Drugs; Invoices Rendered With Sales.*—Every physician, dentist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed, or professionally used by him otherwise than by prescription. It shall, however, be deemed a sufficient compliance with this section if any such person using small quantities or solutions or other preparations of such drugs for local application shall keep a record of the quantity, character, and potency of

such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients.

Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of this section.

Pharmacists and pharmacy owners shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of this article.

The keeping of a record required by or under the federal narcotic law shall constitute the only record required to be kept by every person who purchases for resale or who sells narcotic drug preparations exempted.

Written orders shall not be required for the sale of cannabis indica or cannabis sativa, or peyote and mara huanna, and the provisions of the article in respect to written orders and records shall not apply to cannabis indica, cannabis sativa, peyote and mara huanna, but manufacturers and wholesalers of cannabis indica, cannabis sativa, peyote and mara huanna shall be required to render with every sale of cannabis indica or cannabis sativa, peyote and mara huanna, an invoice, whether such sale be for cash or on credit; and such invoice shall contain the date of such sale, the name and address of the purchaser, and the amount of cannabis indica or cannabis sativa or peyote and mara huanna so sold.

Every purchaser of cannabis indica, cannabis sativa or peyote and mara huanna from a wholesaler or manufacturer shall be required to keep the invoice rendered with such purchase for a period of two years.

(1935, c. 477, s. 10.)

SEC. 90-99. *Labeling Packages Containing Drugs.*—Whenever a manufacturer sells or disposes of a narcotic drug and whenever a wholesaler sells and dispenses a narcotic drug in a package prepared by him, he shall securely affix to each package in which that drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind and form of narcotic drug contained therein. No person, except a pharmacist for the purpose of filling a prescription under this article, shall alter, deface or remove any label so affixed.

(1935, c. 477, s. 11.)

SEC. 90-100. *Labeling Containers of Drugs Dispensed or Prescriptions.*—Whenever a pharmacist sells or dispenses any narcotic drug on prescription issued by a physician, dentist, or veterinarian he shall affix to the container in which such drug is sold or dispensed, a label showing his own name, address, and registry number, or the name, address and registry number of the pharmacist or pharmacy owner for whom he is lawfully acting; the name and address of the patient, or, if the patient is an animal, the name and address of the owner of the animal and the species of the animal; the name, address and registry number of the physician, dentist or veterinarian, by whom the prescription was written; and such directions as may be stated

on the prescription. No person shall alter, deface or remove any label so affixed as long as any of the original contents remain.

(1935, c. 477, s. 11.)

SEC. 90-101. *Lawful Possession in Original Containers.*—A person to whom or for whose use any narcotic drug has been prescribed, sold or dispensed by a physician, dentist, pharmacist, or other person authorized under the provisions of this article, the owner of any animal for which any such drug has been prescribed, sold, or dispensed by a veterinarian, may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same.

(1935, c. 477, s. 12.)

SEC. 90-102. *Common Carriers and Warehousemen Excepted; Other Persons Exempt.*—The provisions of this article restricting the possessing and having control of narcotic drugs shall not apply to common carriers or to warehousemen while engaged in lawfully transporting or storing such drugs, or to any employees of the same acting within the scope of his employment; or to public officers or employees in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties.

(1935, c. 477, s. 13.)

SEC. 90-103. *Places Unlawfully Possessing Drugs Declared Nuisances.*—Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same shall be deemed a common nuisance. No person shall keep or maintain such common nuisance.

(1935, c. 477, s. 14.)

SEC. 90-104. *Forfeiture and Disposition of Drugs Unlawfully Possessed.*—All narcotic drugs the lawful possession of which is not established, or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited, and disposed of as follows:

(a) The court or magistrate having jurisdiction shall immediately notify the state Board of Pharmacy and unless otherwise requested within fifteen days by the state Board of Pharmacy in accordance with sub-section (b) of this section shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place and manner of destruction, shall be kept, and a return under oath, reporting said destruction, shall be made to the court or magistrate and to the United States Commissioner of Narcotics, by the officer who destroys them.

(b) Upon written application by the state Board of Pharmacy the court or magistrate by whom the forfeiture of narcotic drugs has been declared may order the delivery of them except heroin and its salts and derivatives to said state Board of Pharmacy for distribution or destruction, as hereinafter provided.

(c) Upon application by any hospital within this State, not operated for private gain, the state Board of Pharmacy may in its discretion deliver any narcotic drugs that have come into its custody by authority of this section to the applicant for medicinal use. The state Board of Pharmacy may from time to time deliver excess stocks of such drugs to the United States Commissioner of Narcotics, or shall destroy the same.

(d) The state Board of Pharmacy shall keep a full and complete record of all drugs received and of all drugs disposed of, showing the exact kinds, quantities and forms of such drugs; the persons from whom received and to whom delivered; by whose authority received, delivered and destroyed; and the dates of the receipt, disposal, or destruction, which record shall be open to inspection by all federal and state officers charged with the enforcement of federal and state narcotic laws.

(1935, c. 477, s. 15.)

SEC. 90-105. *Prescriptions, Stocks, Etc., Open to Inspection by Officials.*—Prescriptions, orders and records, required by this article, and stocks of narcotic drugs shall be open for inspection only to federal, state, county and municipal officers, whose duty it is to enforce the laws of this State or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription, order or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing board or officer to which prosecution or proceeding the person to whom such prescriptions, orders or records relate is a party.

(1935, c. 477, s. 16.)

SEC. 90-106. *Fraudulent Attempts to Obtain Drugs Prohibited.*—No person shall obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of a narcotic drug (a) by fraud, deceit, misrepresentation, or subterfuge; or (b) by forgery or alteration of a prescription or of any written order; or (c) by the concealment of a material fact; or (d) by the use of false name or the giving of a false address.

(a) Information communicated to a physician in an effort unlawfully to procure a narcotic drug or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(b) No person shall willfully make a false statement in any prescription, order, report, or record, required by this article.

(c) No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, pharmacy owner, physician, dentist, veterinarian, or other authorized person.

(d) No person shall make or utter any false or forged prescription or written order.

(e) No person shall affix any false or forged label to a package or receptacle containing narcotic drugs.

(1935, c. 477, s. 17.)

SEC. 90-107. *Application of Certain Restrictions.*—The provisions of Section 90-106 shall apply to all transactions relating to narcotic drugs under

the provisions of Section 90-97 in the same way as they apply to transactions under all other sections.

(1935, c. 477, s. 18.)

SEC. 90-108. *Possession of Hypodermic Syringes and Needles Regulated.*—No person except a manufacturer or a wholesaler or a retail dealer in surgical instruments, pharmacist, physician, dentist, veterinarian, nurse or interne shall at any time have or possess a hypodermic syringe or needle or any instrument or implement adapted for the use of habit forming drugs by subcutaneous injections and which is possessed for the purpose of administering habit forming drugs, unless such possession be authorized by the certificate of a physician issued within the period of one year prior hereto.

(1935, c. 477, s. 19.)

SEC. 90-109. *Burden on Defendant to Prove Exemption.*—In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this article, it shall not be necessary to negative any exception, excuse, proviso, or exemption, contained in this article, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the defendant.

(1935, c. 477, s. 20.)

SEC. 90-110. *State Board of Pharmacy and Peace Officers to Enforce Article.*—It is hereby made the duty of the state Board of Pharmacy, its officers, agents, inspectors and representatives, and of all peace officers within the State, and of all state's attorneys, to enforce all provisions of this article, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this State and of all other states, relating to narcotic drugs.

(1935, c. 477, s. 21.)

SEC. 90-111. *Penalties for Violation.*—Any person violating any provision of this article shall, upon conviction, be punished for the first offense by a fine not exceeding one thousand (\$1,000.00) dollars or by imprisonment for not exceeding three years, or both; and for any subsequent offense by a fine not exceeding three thousand dollars (\$3,000.00) or by imprisonment for not exceeding five years, or both.

(1935, c. 477, s. 22.)

SEC. 90-112. *Double Jeopardy.*—No person shall be prosecuted for a violation of any provision of this article if such person has been acquitted or convicted under the federal narcotic laws of the same act or commission, which, it is alleged, constitutes a violation of this article.

(1935, c. 477, s. 23.)

SEC. 90-113. *Construction of Article.*—This article shall be so interpreted and construed as to effectuate its general purpose and to make uniform the laws of those states which enact it.

(1935, c. 477, s. 25.)

(3) Patent Cures and Devices Law

SECTION 90-78. *Certain Patent Cures and Devices; Sale and Advertising Forbidden.*—It shall be unlawful for any person, firm, association, or corporation in the state, or any agent thereof, to sell or offer for sale any proprietary or patent medicine or remedy purporting to cure cancer, consumption, diabetes, paralysis, Bright's disease, or any other disease for which no cure has been found, or any mechanical device whose claims for the cure of treatment of disease are false or fraudulent; and it shall be unlawful for any person, firm, association, or corporation in the state, or agent thereof, to publish in any manner, or by any means, or cause to be published, circulated, or in any way placed before the public any advertisement in a newspaper or other publication or in the form of books, pamphlets, handbills, circulars, either printed or written, or by any drawing, map, print, tag, or by any other means whatsoever, any advertisement of any kind or description offering for sale or commending to the public any proprietary or patent medicine or remedy purporting to cure cancer, consumption, diabetes, paralysis, Bright's disease, or any other disease for which no cure has been found, or any mechanical device for the treatment of disease, when the North Carolina Board of Health shall declare that such device is without value in the treatment of disease.

Any person, firm, association, or corporation violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding one hundred dollars for each offense. Each sale, offer for sale, or publication of any advertisement for sale of any of the medicines, remedies, or devices mentioned in this section shall constitute a separate offense.

(1917, c. 27, ss. 1, 2, 3; C.S. 6694.)

SEC. 90-79. *Certain Patent Cures and Devices; Enforcement of Law.* To provide for the efficient enforcement of Section 90-78, the same shall be under the supervision and management of the North Carolina Board of Pharmacy, and it shall be the duty of all registered pharmacists to report immediately any violations thereof to the secretary of the Board of Pharmacy, and any wilful failure to make such report shall have the effect of revoking his license to practice pharmacy in this state.

(1917, c. 27, s. 4, 5; C.S. 6685.)

SEC. 90-80. *Department of Agriculture to Analyze Patent Medicines.*—The chemists and other experts of the Department of Agriculture shall, under such rules and regulations as may be prescribed by the Board of Pharmacy, and upon request of the secretary of said board, make an analytical examination of all samples of drugs, preparations, and compounds sold or offered for sale in violation of Sections 90-78 and 90-79.

(1917, c. 27, s. 6; C.S. 6686.)

(4) Venereal Disease Remedy Law

SECTION 130-213. *Treatment Except by Physicians Unlawful.*—It shall be unlawful for any person except a regularly licensed physician to prescribe or give away any medicine for the treatment of any person afflicted with venereal disease.

(1919, c. 214, s. 1; C.S. 7199.)

SEC. 130-214. *Patented and Proprietary Remedies; Druggists to Report Sales Of.*—Any druggist or other person who sells at retail any patented, proprietary, or trade-mark remedy or alleged remedy advertised or recommended or sold for or used in the treatment of venereal diseases (gonorrhea, syphilis, or chancroid) or lost manhood, impotency, or sterility, or medicinal preparations containing the oils of cubebs, copaiba, sandalwood, or the oils themselves, iodides of mercury, or preparations compounded for urethral injections, shall report weekly on forms and in accordance with instructions supplied by the North Carolina State Board of Health the sale of such remedies or alleged remedies to the bureau of venereal diseases of the North Carolina State Board of Health.

(1919, c. 214, s. 2; C.S. 7200.)

SEC. 130-215. *Obtaining Prescription or Remedy Under False Name a Misdemeanor.*—Any person who, in obtaining a prescription from a physician under Section 130-213, or in obtaining drugs or remedies mentioned in Section 130-214, gives a false or assumed name or address, shall be guilty of a misdemeanor and subject to the penalties imposed in Section 130-220.

(1919, c. 214, s. 3; C.S. 7201.)

SEC. 130-216. *Quarantine Officer May Appoint Physicians as Agents to Issue Prescriptions.*—For the convenience of the public, a quarantine officer, either municipal or county, shall appoint, on the official request of the North Carolina State Board of Health, from the regularly registered physicians of the county one or more agents to issue prescriptions for drugs or remedies, necessary for treatment of such diseases.

(1919, c. 214, s. 4; C.S. 7202.)

SEC. 130-127. *Fees of Quarantine Officer and Agents.*—A quarantine officer or agent of a quarantine officer who issues a prescription for any such drug, remedy, or alleged remedy, and who instructs a person infected with venereal disease as required by the state laws and reports by number but without identification as now prescribed for reports by physicians for such diseases to the North Carolina State Board of Health, shall be entitled to a fee of fifty cents, twenty-five cents of which shall be paid by the bureau of venereal diseases of the North Carolina State Board of Health, and twenty-five cents of which shall be paid by the county commissioners of the county in which the quarantine officer has jurisdiction, on a certification of the bureau of venereal diseases of the North Carolina State Board of Health of the number of prescriptions issued by the quarantine officer or the quarantine officer's agent: *Provided*, that the municipal authorities shall pay the above amount for prescriptions issued by by a municipal quarantine officer or his agent. No quarantine officer shall be entitled to any pay from either county or city for issuing prescriptions to persons who pay the quarantine officer in part or in full for the issuance of prescriptions. Several prescriptions issued on a single visit of the infected person to the quarantine officer shall entitle the said officer to not more than the fee for a single prescription.

(1919, c. 214, s. 5; C.S. 7203.)

SEC. 130-218. *Druggists to Keep Record of Prescriptions; Subject to Inspection.*—Any and all prescriptions for venereal diseases (gonorrhea,

syphilis, or chancroid), or impotency, sterility, or lost manhood, or prescriptions containing the drugs, remedies, or alleged remedies mentioned in Section 130-214, shall be kept by a druggist on a separate file, and shall be subject at any reasonable hour to inspection by an officer of the North Carolina State Board of Health.

(1919, c. 214, s. 6; C.S. 7204.)

SEC. 130-219. *Purchaser of Remedies May Be Examined.*—The state health officer or his deputy may require any purchaser of remedies or alleged remedies designated in Section 130-214, and who may be reasonably supposed to be infected with a venereal disease, to appear before a regularly licensed physician, quarantine officer or agent, for an examination for such disease.

(1919, c. 214, s. 7; C.S. 7205.)

SEC. 130-220. *Violation of This Article a Misdemeanor.*—Any person violating any of the provisions of part two of this article, Sections 130-213 to 130-220, shall be guilty of a misdemeanor and shall be fined not less than ten dollars nor more than fifty dollars, or imprisoned for not exceeding thirty days.

(1919, c. 214, s. 8; C.S. 7206.)

SEC. 130-221. *Wassermann Test Required of Prospective Mothers.*—Every woman who becomes pregnant shall have a blood sample taken and submitted to a laboratory approved by the North Carolina State Board of Health for performing the Wassermann test or other approved test for syphilis.

(1939, c. 313, s. 1.)

SEC. 130-222. *Services of Duly Licensed Physician Upon Request; Reference of Cases Thereto.*—A duly licensed physician shall, upon the request of said woman, secure or cause to be secured a sample of blood and submit said sample to a laboratory approved by the State Board of Health for performing the Wasserman test or other approved tests for syphilis.

Such persons as are permitted by law to attend a woman during the period of her gestation and childbirth but not permitted by law to take such blood samples shall, upon the request of said patient, refer such patient to a duly licensed physician who, in turn, shall take or cause to be taken such blood sample and submit same to a laboratory approved by the State Board of Health for performing the Wasserman test or other approved test for syphilis.

(1939, c. 313, s. 2.)

(5) Hypnotic Drug Law¹⁰

SECTION 90-81. *Hypnotic Drugs Defined and Enumerated.*—In Sections 90-81 to 90-85, unless the context otherwise requires, the words "hypnotic drug" include:

Sulphonmethane (sulphonal).

Sulphonethylmethane (trional).

Diethyl sulphonedrethylmethane (tetronal).

¹⁰ This law, Public Laws 1931, Chapter 162, is superceded in many particulars by the North Carolina Food, Drug and Cosmetic Act, Public Laws 1939, Chapter 320. See Chapter IV.

Dietyl barbituric acid (barbital), or any of the foregoing by whatsoever trade name or designation; or any compound, preparation, mixture or solution thereof; or any salt or derivative thereof or of barbituric acid possessing hypnotic properties or effects.

Chloral hydrate or any mixture or solution thereof containing twenty grains or more thereof to the fluid ounce.

(1931, c. 162, s. 1.)

SEC. 90-82. *Sale Prohibited Except by Physicians and Pharmacists.*—No person other than a licensed pharmacist, a duly licensed physician, doctor of dental surgery, or doctor of veterinary surgery shall sell or offer to sell any hypnotic drug to consumers or have such drug in his possession with intent to sell or give away to consumers.

(1931, c. 162, s. 2.)

SEC. 90-83. *Limitation on Quantity That May Be Sold; Exception; Record of Sales.*—No hypnotic drug as defined in Sections 90-81 to 90-85 may be sold in quantities exceeding twelve therapeutic doses, except to persons known to be suffering with epilepsy: *Provided, however,* that nothing in Sections 90-81 to 90-85 shall apply to prescriptions of duly licensed physicians, doctors of dental surgery, or doctors of veterinary surgery.

Any person dispensing any hypnotic drug coming under the provisions of Sections 90-81 to 90-85, other than upon prescription, shall record in a book kept for the purpose the name of the article sold, the quantity delivered, the date of delivery, the name and address of the purchaser and the name of the dispenser, which record shall at all times be open to the inspection of the proper officer of the law.

(1931, c. 162, s. 3.)

SEC. 90-84. *Dispensing of Drugs by Physicians in Lawful Practice.*—Nothing in Sections 90-81 to 90-85 shall be construed to limit the sale of hypnotic drugs to, nor to the dispensing of hypnotic drugs in the course of their professional practice by, duly licensed physicians, doctors of dental surgery or doctors of veterinary surgery lawfully practicing their profession in this State, or to registered retail or wholesale pharmacists, or to hospitals and other institutions for the treatment of defective, afflicted, sick and injured persons.

(1931, c. 162, s. 4.)

SEC. 90-85. *Violation of Sections 90-81 to 90-85 a Misdemeanor.*—Any person who shall violate any provision of Sections 90-81 to 90-85 shall be deemed guilty of a misdemeanor and upon conviction therefor for the first offense shall be fined not more than twenty-five dollars, and upon conviction of the second offense shall be fined not more than one hundred dollars.

(1931, c. 162, s. 5.)

(6) Alcohol Exemption Law

SECTION 18-19. *Sale by Druggists or Pharmacists.*—It is unlawful for any druggist or pharmacist to sell, or otherwise dispose of for gain, any intoxicating liquor.

(1923, c. 1, s. 18; C.S. 3411 (r).)

SEC. 18-20. *Grain Alcohol for Use in Medicine or Surgery; Manufacture or Sale of Cider.*—The provisions of this article shall not apply to grain alcohol, received by duly licensed physicians, druggists, dental surgeons, college, university, and state laboratories, and manufacturers of medicine, when intended to be used in compounding, mixing, or preserving medicines or medical preparations, or for surgical purposes, when obtained as herein-before provided: *Provided, however*, that nothing contained in this article shall prohibit the importation into the state of North Carolina and the delivery and possession in the state for use in industry, manufacture, and arts of any denatured alcohol or other denatured spirits which are compounded and made in accordance with the formulae prescribed by acts of Congress of the United States and regulations made under authority thereof by the Treasury Department of the United States and the commissioner of internal revenue thereof, and which are not now subject to internal revenue tax levied by the Government of the United States: *Provided, further*, that this article shall not apply to wines and liquors required and used by hospitals or sanitoriums bona fide established and maintained for the treatment of patients addicted to the use of liquor, morphine, opium, cocaine, or other deleterious drugs, when the same are administered to patients actually in such hospitals or sanatoriums for treatment, and when the same are administered as an essential part of the particular system or method of treatment and exclusively by or under the direction of a duly licensed and registered physician of good moral character and standing: *Provided, further*, that this article shall not prohibit the manufacture or sale of cider or vinegar.

(1923, c. 1, s. 19; C.S. 3411 (s).)

(7) Jamaica Ginger Law

SECTION 14-389. *Sale of Jamaica Ginger.*—It shall be unlawful for any person, firm, or corporation to sell the compound known as Jamaica ginger except upon the prescription of a duly licensed and regularly practicing physician; the person, firm, or corporation selling Jamaica ginger upon prescription shall keep a list of said prescriptions, and shall allow said list to be examined by any officer of the law, and no prescription shall ever be filled but once; it shall be unlawful for any physician to give a prescription for Jamaica ginger except to a person directly under his care, and then only in good faith for medicinal purposes only.

(1919, c. 288; Pub. Loc. 1913, c. 761; C.S. 4507.)

CHAPTER III

Fair Trade Act

SECTION 66-50. *Title of Article.*—This article may be known and cited as the “Fair Trade Act.”
(1937, c. 350, s. 10.)

SEC. 66-51. *Definitions.*—The following terms, as used in this article, are hereby defined as follows:

(a) “Commodity” means any subject of commerce.

(b) “Producer” means any grower, baker, maker, manufacturer, bottler, packer, converter, processor or publisher.

(c) “Wholesaler” means any person selling a commodity other than a producer or retailer.

(d) “Retailer” means any person selling a commodity to consumers for use.

(e) “Person” means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust or any unincorporated organization. “Person” shall not include the state of North Carolina or any of its political sub-divisions.

(1937, c. 350, s. 1.)

SEC. 66-52. *Authorized Contracts Relating to Sale or Resale of Commodities Bearing Trademark, Brand or Name.*—No contract relating to the sale or resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which commodity is in free and open competition with commodities of the same general class produced or distributed by others, shall be deemed in violation of any law of the state of North Carolina by reason of any of the following provisions which may be contained in such contract:

(a) That the buyer will not resell such commodity at less than the minimum price stipulated by the seller.

(b) That the buyer will require of any dealer to whom he may resell such commodity an agreement that he will not, in turn, resell at less than the minimum price stipulated by the seller.

(c) That the seller will not sell such commodity:

(1) To any wholesaler, unless such wholesaler will agree not to resell the same to any retailer unless the retailer will in turn agree not to resell the same except to consumers for use and at not less than the stipulated minimum price, and such wholesaler will likewise agree not to resell the same to any other wholesaler unless such other wholesaler will make the same agreement with any wholesaler or retailer to whom he may resell; or

(2) To any retailer, unless the retailer will agree not to resell the same except to consumers for use and at not less than the stipulated minimum price.

(1937, c. 350, s. 2.)

SEC. 66-53. *Certain Evasions of Resale Price Restrictions, Prohibited.*—For the purpose of preventing evasion of the resale price restrictions im-

posed in respect of any commodity by any contract entered into pursuant to the provisions of this article (except to the extent authorized by the said contract) :

(a) The offering or giving of any article of value in connection with the sale of such commodity;

(b) The offering or the making of any concession of any kind whatsoever (whether by the giving of coupons or otherwise) in connection with any such sale; or

(c) The sale or offering for sale of such commodity in combination with any other commodity shall be deemed a violation of such resale price restriction, for which the remedies prescribed by Section 66-56 shall be available.

(1937, c. 350, s. 3.)

SEC. 66-54. *Contracts with Persons Other Than the Owner of the Brand, Etc., Not Authorized.*—No minimum resale price shall be established for any commodity, under any contract entered into pursuant to the provisions of this article, by any person other than the owner of the trade-mark, brand or name used in connection with such commodity or a distributor specifically authorized to establish said price by the owner of such trade-mark, brand or name.

(1937, c. 350, s. 4.)

SEC. 66-55. *Resales Not Precluded by Contract.*—No contract containing any of the provisions enumerated in Section 66-52 shall be deemed to preclude the resale of any commodity covered thereby without reference to such contract in the following cases:

(a) In closing out the owner's stock for the bona fide purpose of discontinuing dealing in any such commodity and when plain notice of the fact is given to the public: *Provided*, the owner of such stock shall give to the producer or distributor of such commodity prompt and reasonable notice in writing of his intention to close out said stock, and an opportunity to purchase such stock at the original invoice price;

(b) When the trade-mark, brand or name is removed or wholly obliterated from the commodity and is not used or directly or indirectly referred to in the advertisement or sale thereof;

(c) When the goods are altered, second-hand, damaged or deteriorated and plain notice of the fact is given to the public in the advertisement and sale thereof, such notice to be conspicuously displayed in all advertisements and to be affixed to the commodity;

(d) By any officer acting under an order of court.

(e) When any commodity is sold to a religious, charitable or educational organization or institution, provided such commodity is for the use of such organization and not for resale.

(1937, c. 350, s. 5.)

SEC. 66-56. *Violation of Contract Declared Unfair Competition.*—Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provisions of this article, whether the person so advertising, offering for

sale or selling is or is not a part to such contract, is unfair competition and is actionable at the suit of any person damaged thereby.

(1937, c. 350, s. 6.)

SEC. 66-57. *Exemptions.*—This article shall not apply to any contract or agreement between or among producers or distributors or, except as provided in sub-division (c) of Section 66-52, between or among wholesalers, or between or among retailers, as to sale or resale prices. This article shall not apply to any prices offered in connection with or contracts or purchases made by the state of North Carolina or any of its agencies, or any of the political subdivisions of the said state.

(1937, c. 350, s. 7.)

CHAPTER IV

Food, Drug and Cosmetic Act

SECTION 106-120. *Title of Article.*—This article may be cited as the North Carolina Food, Drug and Cosmetic Act.

(1939, c. 320, s. 1.)

SEC. 106-121. *Definitions.*—For the purpose of this article—

(a) The term “commissioner” means the commissioner of agriculture; the term “department” means the department of agriculture, and the term “board” means the board of agriculture.

(b) The term “person” includes individual, partnership, corporation, and association.

(c) The term “food” means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

(d) The term “drug” means (1) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clauses (1), (2), or (3); but does not include devices or their components, parts or accessories.

(e) The term “device” (except when used in paragraph (k) of this section and in sections 106-122, subsection (j), 106-130, subsection (f), 106-134, subsection (c) and 106-137, subsection (c) means instruments, apparatus and contrivances, including their components, parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; of (2) to affect the structure or any function of the body of man or other animals.

(f) The term “cosmetic” means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles, except that such terms shall not include soap.

(g) The term “official compendium” means the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

(h) The term “label” means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this article that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the

outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(i) The term "immediate container" does not include package liners.

(j) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon an article or any of its containers or wrappers, or (2) accompanying such article.

(k) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(l) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purposes of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics.

(m) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(n) The term "new drug" means (1) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigation, been used to a material extent or for a material time under such conditions.

(o) The term "contaminated with filth" applies to any food, drug, device or cosmetic not securely protected from dust, dirt, and as far as may necessary by all reasonable means, from all foreign or injurious contaminations.

(p) The provisions of this article regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article; and the supplying or applying of any such article in the conduct of any food, drug or cosmetic establishment.

(q) The term "Federal Act" means the Federal Food, Drug and Cosmetic Act.

(Title 21 U. S. C. 301 et seq; 52 Stat. 1041 et seq.)
(1939, c. 320, s. 2.)

SEC. 106-122. *Certain Acts Prohibited.*—The following acts and the causing thereof within the state of North Carolina are hereby prohibited:

(a) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, or cosmetic.

(c) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of sections 106-131 or 106-135.

(e) The dissemination of any false advertisement.

(f) The refusal to permit entry or inspection, or refusal to permit the taking of a sample, as authorized by section 106-140.

(g) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the state of North Carolina from whom he received in good faith the food, drug, device or cosmetic.

(h) The removal or disposal of a detained or embargoed article in violation of section 106-125.

(i) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded.

(j) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under the provisions of this article.

(k) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under section 106-135, or that such drug complies with the provisions of such section.

(1939, c. 320, s. 3.)

SEC. 106-123. *Injunctions Restraining Violations.*—In addition to the remedies hereinafter provided the commissioner of agriculture is hereby authorized to apply to the superior court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of section 106-122; irrespective of whether or not there exists an adequate remedy at law.

(1939, c. 320, s. 4.)

SEC. 106-124. *Violations Made Misdemeanor.*—(a) Any person who violates any of the provisions of section 106-122 shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment in county jail for not more than six months or a fine of not more than two hundred dollars, or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this section has become

final, such person shall be subject to imprisonment in county jail for not more than twelve months, or a fine of not more than four hundred dollars, or both such imprisonment and fine.

(b) No person shall be subject to the penalties of subsection (a) of this section, for having violated section 106-122, subsection (a) or (c) if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the state of North Carolina from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this article, designating this article.

(c) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused on the request of the commissioner of agriculture to furnish the commissioner the name and post office address of the manufacturer, packer, distributor, seller or advertising agency, residing in the state of North Carolina who caused him to disseminate such advertisement.

(1939, c. 320, s. 5.)

SEC. 106-125. Detention of Product or Article Suspected of Being Adulterated or Misbranded.—(a) Whenever a duly authorized agent of the department of agriculture finds or has probable cause to believe, that any food, drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent within the meaning of this article, he shall affix to such article a tag or other appropriate marking giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(b) When an article detained or embargoed under subsection (a) has been found by such agent to be adulterated, or misbranded, he shall petition the judge of any recorder's, county, or superior court in whose jurisdiction the article is detained or embargoed for an order for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent; and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent: *Provided*, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been

executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the department of agriculture. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the department of agriculture that the article is not longer in violation of this article, and that the expenses of such supervision have been paid.

(d) Whenever any duly authorized agent of the department of agriculture shall find in any room, building, vehicle of transportation or other structure, any meat, sea food, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the agent shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food.

(1939, c. 320, s. 6.)

SEC. 106-126. *Prosecutions of Violations.*—It shall be the duty of any solicitor of a recorder's, county, or superior court, to whom the commissioner of agriculture reports any violation of this article, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of this article is reported to any such solicitor for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and opportunity to present his views before the commissioner of agriculture or his designated agent, either orally or in writing, in person or by attorney, with regard to such contemplated proceeding.

(1939, c. 320, s. 7.)

SEC. 106-127. *Report of Minor Violations in Discretion of Commissioner.*—Nothing in this article shall be construed as requiring the commissioner of agriculture to report for the institution of proceedings under this article, minor violations of this article, whenever the commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

(1939, c. 320, s. 8.)

SEC. 106-128. *Establishment of Reasonable Standards of Quality by Board of Agriculture.*—Whenever in the judgment of the board of agriculture such action will promote honesty and fair dealing in the interest of consumers, the board shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, and/or reasonable standard of quality and/or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the board shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated by the secretary of the United

States department of agriculture, under authority conferred by section four hundred one (401) of the Federal Act.

(1939, c. 320, s. 9.)

SEC. 106-129. *Foods Deemed To Be Adulterated.*—A food shall be deemed to be adulterated—

(a) (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or (2) if it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of section 106-132; or (3) if it consists in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance, or if it is otherwise unfit for food; or (4) if it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health; or (5) if it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or (6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(b) (1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

(c) If it is confectionery and it bears or contains any alcohol or non-nutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one per centum, harmless natural gum, and pectin: *Provided* that this paragraph shall not apply to any confectionery by reason of its containing less than one-half of one per centum by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless non-nutritive masticatory substances.

(d) If it bears or contains a coal-tar color other than one from a batch which has been certified by the United States department of agriculture.

(1939, c. 320, s. 10.)

SEC. 106-130. *Foods Deemed Misbranded.*—A food shall be deemed to be misbranded—

(a) If its labeling is false or misleading in any particular.

(b) If it is offered for sale under the name of another food.

(c) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated.

(d) If its container is so made, formed or filled as to be misleading.

(e) If in package form, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2)

an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the board of agriculture.

(f) If any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by section 106-128, unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, in so far as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

(h) If it purports to be or is represented as (1) a food for which a standard of quality has been prescribed by regulations as provided in section 106-128 and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or (2) a food for which a standard or standards of fill of container have been prescribed by regulation as provided by Section 106-128, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

(i) If it is not subject to the provisions of paragraph (g) of this section, unless its label bears (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings without naming each: *Provided, that*, to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the board of agriculture.

(j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the board of agriculture determines to be, and by regulations prescribes as, necessary in order to fully inform purchasers as to its value for such uses.

(k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears a label stating that fact: *Provided*, that to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the board of agriculture: *Provided, further*, that for the purpose of complying with the provisions of this article, as it pertains to bottled soft drinks, either the bottle crown or the crown together with the blown-in-the-bottle or annealed-to-the-bottle statements, now in usual and common

use in this state, shall be deemed sufficient labeling and no paper label shall be deemed necessary.

(1939, c. 320, s. 11.)

SEC. 106-131. *Permits Governing Manufacture of Foods Subject to Contamination with Micro-organisms.*—(a) Whenever the commissioner of agriculture finds after investigation by himself or his duly authorized agents, that the distribution in North Carolina of any class of food may, by reason of contamination with micro-organisms during manufacture, processing, or packing thereof in any locality in this state, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered commerce, the commissioner, then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the commissioner as provided by such regulations.

(b) The commissioner of agriculture is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the commissioner shall immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

(c) Any officer or employee duly designated by the commissioner of agriculture shall have access to any factory or establishment, the operator of which holds a permit from the commissioner of agriculture for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

(1939, c. 320, s. 12.)

SEC. 106-132. *Regulations by Board of Agriculture as to Use of Deleterious Substances.*—Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of clause (2) of section 106-129, subsection (a); but when such substance is so required or cannot be so avoided, the board of agriculture shall promulgate regulations limiting the quantity therein or thereon to such extent as the board finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for the purposes of the application of clause (2) of section 106-129, subsection (a). While such a regulation is

in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1) section 106-129, subsection (a). In determining the quantity of such added substance to be tolerated in or on different articles of food, the board shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

(1939, c. 320, s. 13.)

SEC. 106-133. *Drugs Deemed To Be Adulterated.*—A drug or device shall be deemed to be adulterated—

(a) (1) If it consists in whole or in part of any filthy, putrid or decomposed substance; or (2) if it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health, or (3) if it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if it is a drug and it bears or contains, for purposes of coloring only, a coal-tar color other than one from a batch certified by the United States Department of Agriculture.

(b) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those so prescribed by the United States department of agriculture. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homoeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homoeopathic drug, in which case it shall be subject to the provisions of the Homoeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(c) If it is not subject to the provisions of paragraph (b) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

(d) If it is a drug and any substance has been (1) mixed or packed therewith so as to reduce its quality or strength; or (2) substituted wholly or in part therefor.

(1939, c. 320, s. 14.)

SEC. 106-134. *Drugs Deemed Misbranded.*—A drug or device shall be deemed misbranded—

(a) If its labeling is false or misleading in any particular.

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; *Provided*, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board of Agriculture.

(c) If any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(d) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alphaeucaine, barbituric acid, betaeucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, mara huana, morphine, opium, paraldehyde, peyote, or sulphonmethane; or any chemical derivative of such substances, which derivative has been by the board after investigation, found to be, and by regulations under this article, designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

(e) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears (1) the common or usual name of the drug, if such there be; and (2) in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidid, amidopyrine, antipyrine atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: *Provided*, that to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the board of agriculture.

(f) Unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: *Provided*, that where any requirement of clause (1) of this paragraph, as applied to any drug or device, is not necessary for the protection of the public health, the board of agriculture shall promulgate regulations exempting such drug or device from such requirements.

(g) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: *Provided*, that the method of packing may be modified with the consent of the board of agriculture. Whenever a drug is recognized in both the

United States Pharmacopoeia and the Homoeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homoeopathic drug, in which case it shall be subject to the provisions of the Homoeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(h) If it has been found by the Department of Agriculture to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the board of agriculture shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the commissioner of agriculture shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(i) (1) If it is a drug and its container is so made, formed, or filled as to be misleading; or (2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug.

(j) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

(k) If it is a drug sold at retail for use by man and contains any quantity of aminopyrine, barbituric acid, cinchophen, dinitrophenol, or sulfanilamide; unless it is sold on a written prescription signed by a member of the medical, dental or veterinary profession, who is licensed by law to administer such drug, and its label bears the name and place of business of the seller, the serial number and date of such prescription, and the name of such member of the medical, dental or veterinary profession.

(1) A drug sold on a written prescription signed by a member of the medical, dental or veterinary profession (except a drug sold in the course of the conduct of a business of selling drugs pursuant to a diagnosis by mail) shall be exempt from the requirements of this section if—(1) such member of the medical, dental or veterinary profession is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the seller, the serial number and date of such prescription, and the name of such member of the medical, dental or veterinary profession.

(1939, c. 320, s. 15.)

SEC. 106-135. *Regulations for Sale of New Drugs.*—(a) No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless (1) an application with respect thereto has become effective under section five hundred and five of the Federal Act, or (2) when not subject to the Federal Act unless such drug has been tested and has not been found to be unsafe for use under the conditions prescribed, recommended or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the commissioner of agriculture an application setting forth (a) full reports of investigations which have been made to show whether or not such drug is safe for use; (b) a full list of the articles used as components of such drug; (c) a full statement of the composition

of such drug; (d) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (e) such samples of such drug and of the articles used as components thereof as the commissioner may require; and (f) specimens of the labeling proposed to be used for such drug.

(b) An application provided for in subsection (a) (2) of this section shall become effective on the sixtieth day after the filing thereof, except that if the commissioner of agriculture finds after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe for use under the conditions prescribed, recommended or suggested in the proposed labeling thereof, he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(c) This section shall not apply—(1) to a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs provided the drug is plainly labeled "For investigational use only"; or (2) to a drug sold in this state at any time prior to the enactment of this article or introduced into interstate commerce at any time prior to the enactment of the Federal Act; or (3) to any drug which is licensed under the virus, serum, and toxin Act of July first, one thousand nine hundred and two (U. S. C. one thousand nine hundred and thirty-four ed. title forty-two, chapter four).

d) A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail), shall be exempt from the requirements of this section if (1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian.

(e) An order refusing to permit an application under this section to become effective may be revoked by the commissioner of agriculture.

(1939, c. 320, s. 16.)

SEC. 106-136. *Cosmetics Deemed Adulterated*.—A cosmetic shall be deemed to be adulterated—

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual: *Provided*, that this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness," and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this paragraph and paragraph (e) the term "hair dye," shall not include eyelash dyes or eyebrow dyes.

(b) If it consists in whole or in part of any filthy, putrid, or decomposed substance.

(c) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(d) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(e) If it is not hair dye and it bears or contains a coal-tar color other than one from a batch which has been certified by the United States Department of Agriculture.

(1939, c. 320, s. 17.)

SEC. 106-137. *Cosmetics Deemed Misbranded.*—A cosmetic shall be deemed misbranded—

(a) If its labeling is false or misleading in any particular.

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity, of the contents in terms of weight, measure, or numerical count: *Provided*, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the board of agriculture.

(c) If any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(d) If its container is so made, formed, or filled as to be misleading.

(1939, c. 320, s. 18.)

SEC. 106-138. *False Advertising.*—(a) An advertisement of a food, drug, device or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) For the purpose of this article the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis, media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or venereal diseases, shall also be deemed to be false; except that no advertisement not in violation of subsection (a) shall be deemed to be false under this subsection if it is disseminated only to members of the medical, dental, pharmaceutical, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: *Provided*, that whenever the department of agriculture determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the board shall by regulation authorize the advertisement of drugs

having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the board may deem necessary in the interest of public health: *Provided*, that this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

(1939, c. 320, s. 19.)

SEC. 106-139. *Regulations by Board of Agriculture.*—(a) The authority to promulgate regulations for the efficient enforcement of this article is hereby vested in the board of agriculture, except that the commissioner of agriculture is hereby authorized to promulgate regulations under Section 106-131. The board is hereby authorized to make the regulations promulgated under this article conform, in so far as practicable with those promulgated under the federal act.

(b) Hearings authorized or required by this article shall be conducted by the commissioner of agriculture or such officer, agent, or employee as the commissioner may designate for the purpose.

(c) A representative duly designated by the North Carolina Board of Pharmacy, and a representative duly designated by the North Carolina Board of Health shall sit with the commissioner of agriculture, or his duly authorized agent, and assist in all hearings conducted in accordance with the provisions of Section 106-134, subsections (d), (f), (g), and (h); and in all cases of hearings and/or investigations, under Section 106-134, subsections (d), (f), (g), and (h) and under Section 106-135, subsections (a), (b), and (d), transcripts of all findings and recommendations shall be submitted to the Board of Pharmacy and the Board of Health for approval.

(d) Before promulgating any regulation contemplated by Sections 106-128; 106-130, subsection (j); 106-131; 106-134, subsections (d), (f), (g), and (h), or 106-138, subsection (b), the commissioner of agriculture shall give appropriate notice of the proposal and of the time and place for a hearing. The regulation so promulgated shall become effective on a date fixed by the board of agriculture (which date shall not be prior to ninety days after its promulgation, except such regulations as may be promulgated under Section 106-131, which regulations shall become effective on the date of promulgation). Such regulation may be amended or repealed in the same manner as is provided for its adoption; except that in the case of a regulation amending or repealing any such regulation the board, to such an extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing, or effective date.

(e) All proposed definitions and standards for drugs shall, prior to promulgation by the Board of Agriculture be submitted to the Board of Pharmacy and the Board of Health for approval.

(1939, c. 320, s. 20.)

SEC. 106-140. *Further Powers of Commissioner of Agriculture for Enforcement of Article.*—The commissioner of agriculture or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or are held after such introduction, or to enter any vehicle being used to transport or hold such foods, drugs, devices or cosmetics in commerce, for the

purpose: (1) of inspecting such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein, to determine if any of the provisions of this article are being violated, and (2) to secure samples or specimens of any food, drug, device or cosmetic after paying or offering to pay for such sample. It shall be the duty of the commissioner of agriculture to make or cause to be made examination of samples secured under the provisions of this section to determine whether or not any provision of this article is being violated.

(1939, c. 320, s. 21.)

SEC. 106-141. *Appointment of Inspectors.*—(a) In the appointment of any drug inspector in carrying out the provisions of this article, the commissioner of agriculture shall confer with the North Carolina Board of Pharmacy.

(b) The commissioner of agriculture is authorized to conduct the examinations and investigations for the purposes of this article through officers and employees of the department or through any health, food or drug officer or employee of the state, or any political subdivision thereof: *Provided*, that when examinations and investigations are to be conducted through any officer or employee of any agency other than the Department of Agriculture the arrangements for such examinations and investigation shall be approved by the directing head of such agency.

(1939, c. 320, s. 22.)

SEC. 106-142. *Publication of Reports of Judgments, Decrees, Etc.*—(a) The commissioner of agriculture may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this article, including the nature of the charge and the disposition thereof.

(b) The commissioner of agriculture may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as he deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the commissioner of agriculture from collecting, reporting, and illustrating the results of the investigations of the department.

(1939, c. 320, s. 23.)

SEC. 106-43. *Article Construed Supplementary.*—Nothing in this article shall be construed as in any way amending, abridging, or otherwise affecting the validity of any law or ordinance relating to the State Board of Health, or any local health department, in their sanitary work in connection with public and private water supplies, sewerage, meat, milk products, shellfish, fin fish, or other foods, or food products, or the production, handling, or processing thereof; but this article shall be construed to be in addition thereto.

(1939, c. 320, s. 24½.)

SEC. 106-144. *Exemptions.*—Meats and meat products subject to Federal Meat and Inspection Act approved March four, one thousand nine hundred

and seven, as amended, are exempted from the provisions of this article so long as such meats and meat products remain in possession of the processor. (1939, c. 320, s. 24½.)

SEC. 106-145. *Effective Date.*—This article shall be in full force and effect from and after January first, one thousand nine hundred and forty: *Provided*, that the provisions of Section 106-139 shall become effective on April 3, 1939 and thereafter the commissioner of agriculture is authorized hereby to conduct hearings, and the board is authorized to promulgate regulations which shall become effective on and after the effective date of this article as the board shall direct.

(1939, c. 320, s. 25.)

CHAPTER V

Insecticide and Fungicide Law

SECTION 106-52. *Rules and Standards.*—The Department of Agriculture shall have power to make rules, regulations and adopt standards to carry out the designs and purposes of this article.

(1927, c. 53, s. 1.)

SEC. 106-53. *Registration.*—Before any manufacturer or dealer shall sell, offer or expose for sale in this State any paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide he shall register with the Department of Agriculture the name of each brand of said preparation, the name and address of the manufacturer or dealer, the minimum per cent of each and every toxic chemical or compound present, and the specific name of each active ingredient used in the manufacture and the weight of the packages in which the material is packed. The words "paris green, calcium arsenate, lead arsenate and all other insecticides and fungicides" mentioned and used in this article, shall apply only to insecticides and fungicides used on cotton, tobacco, all field crops, gardens, orchards, fruits, etc., for the control or destruction of insect life and fungus diseases.

(1927, c. 53, s. 2.)

SEC. 106-54. *Labels to Be Affixed.*—Every lot, package or parcel of paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide, offered or exposed for sale within this State, shall have affixed thereto a tag or label, in a conspicuous place on the outside thereof containing a legible and plainly printed statement in the English language clearly and truly certifying

(a) the net weight of the lot, package or parcel;

(b) the name, brand or trademark;

(c) the name and address of the manufacturer, importer, jobber, firm, association, corporation, dealer or person, etc., responsible for placing the commodity on the market;

(d) the minimum per cent of each and every toxic chemical or compound present.

(e) the specific name of each active ingredient used in its manufacture.

(1927, c. 53, s. 3.)

SEC. 106-55. *Refusal and Cancellation of Registration.*—The Commissioner shall have the power to refuse to register any paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide under a name, brand or trademark, which would be misleading or deceptive. Should any paris green, calcium arsenate, lead arsenate or any other insecticide be registered in the State and it is afterward discovered that such registration is in violation of any of the provisions of this article, the Commissioner shall cancel such registration.

(1927, c. 53, s. 4.)

SEC. 106-56. *Registration Fee; Expiration of Registration Certificate; Renewal.*—All manufacturers or distributors, for the purpose of defraying the expenses connected with the enforcement of this article, before selling, offering or exposing for sale in this state any paris green, calcium arsenate, lead arsenate or any other insecticides and fungicides, shall pay annually to the Department of Agriculture a registration fee of ten dollars (\$10.00) for each and every brand of the aforementioned insecticides and fungicides registered as required under Section 106-53. All certificates of registration shall expire on the thirty-first day of December next following the date of issuance and shall be subject to renewal upon receipt of annual registration fees.

(1927, c. 53, s. 5; 1939, c. 284, s. 1.)

SEC. 106-57. *Certificates Entitling Manufacturers or Distributors to Sell; Unlawful Sale, Etc.*—To manufacturers or distributors who have duly registered their brands and have paid registration fees on paris green, calcium arsenate, lead arsenate or other insecticides and fungicides in compliance with the requirements of this article, there shall be issued by the Department of Agriculture certificates which shall entitle said manufacturers or distributors to sell all duly registered brands until the expiration of such certificates as provided under Section 106-56. When any manufacturer or distributor shall have duly complied with the provisions of this article, no other agency representing such manufacturer or distributor shall be required or pay registration fees on such brands as have been duly registered. It shall be unlawful for any manufacturer or distributor, or their agents to sell, offer or expose for sale in this state any of the aforementioned insecticides or fungicides which have not been duly registered and for which annual registration fees have not been paid.

(1927, c. 53, s. 6; 1939, c. 284, s. 1.)

SEC. 106-58. *Requirement of Identifying Color or Medium.*—For the purpose of safeguarding the legitimate uses of paris green, calcium arsenate, lead arsenate and all other insecticides and fungicides and to prevent the poisoning of man or animal by confusion with or mixing with foods and feeds, either by accident or intent, it shall be required as a qualification for registration that all such aforesaid insecticides and fungicides which are likely to be confused with or which are not readily apparent when mixed with such foods or feeds, shall bear or contain some identifying added color or medium to differentiate them from, or to show their presence when contained in such foods or feeds; *provided* that no commodity intended for insecticidal, fungicidal or similar purposes which is already developed, or new products for these purposes which may appear from time to time shall be excluded from registration where there is not available or has not been developed a suitable identifying color or medium; and, *provided* that in the absence of a suitable identifying color or medium, the commissioner shall have authority himself or through representatives designated by him to co-operate with manufacturers and distributors in the development of suitable safeguards; final decision, with due right of appeal, resting in the discretion of the Board of Agriculture.

(1927, c. 53, s. 7; 1929, c. 196, s. 1; 1939, c. 284, s. 1.)

SEC. 106-59. *Statement Mailed; What Shown.*—Every manufacturer and dealer who has registered paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide for sale within the state of North Carolina shall mail to the commissioner on forms provided by the commissioner, within forty-eight hours of each sale, shipment or delivery into or within North Carolina, a statement showing the official name of the insecticide or fungicide, the guaranteed analysis, the quantity and the name and address of the purchaser to whom sold, the initials and numbers of the car, if sold in car lots.

(1927, c. 53, s. 8; 1933, c. 233; 1939, c. 284, s. 4.)

SEC. 106-60. *Entrance for Inspection or Sampling; Analysis.*—The Commissioner in person, or by deputy, shall have the power to enter into any car, warehouse, store, building, boat, vessel or place supposed to contain insecticides or fungicides, for the purpose of inspection or sampling, and shall have the power to take samples for analysis from any lot, package or parcel of insecticides or fungicides. It shall be unlawful for any person to oppose entrance of said Commissioner or deputy or in any way interfere with the discharge of his duty. All analyses shall be made by the official methods of the Association of Official Agricultural Chemists of the United States, and shall be made by chemists of the Department of Agriculture. Where a method of analysis is required before the association of official agricultural chemists has adopted an official or tentative one, and pending appearance of an official method by the association of official agricultural chemists, such methods as may be available or may be developed, subject to approval by the Board of Agriculture, may be used; *provided* that such method upon being used shall be immediately available for use and checking to all persons, firms or corporations concerned, and results from such methods shall be subject to a reasonable period of consideration and hearings before any proceedings based upon them are instituted.

(1927, c. 53, s. 9; 1939, c. 284, s. 2.)

SEC. 106-61. *Use of Stamp a Second Time; Adulterated and Misbranded Articles; Injunction.*—It shall be unlawful for any manufacturer or distributor to sell, offer or expose for sale in this state any paris green, calcium arsenate, lead arsenate or any other insecticides or fungicides which are adulterated or misbranded within the meaning of this article. Any paris green, calcium arsenate, lead arsenate and any other insecticide or fungicide shall be deemed to be adulterated if its strength or purity fall below the professed standard or quality under which it is sold; or if any substance has been substituted wholly or in part for the article; or if any valuable constituent of the article has been wholly or in part abstracted; or if it be in any way depreciated or be in departure from the true and honest value represented. Paris green, calcium arsenate, lead arsenate and all other insecticides and fungicides shall be deemed to be misbranded if it carries any false or misleading statement upon or attached to the lot, package or parcel, or, if any false or misleading statements concerning its value are made on the lot, package or parcel, or in any printed advertising matter issued by the manufacturer or dealer that registered paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide, or if the number of net pounds set forth upon the package, lot, or parcel is not correct. It shall be

the duty of the Attorney-General when requested by the Commissioner, to institute suit to enjoin any manufacturer, or dealer, resident or non-resident, from manufacturing or selling or soliciting orders for the sale of paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide, for use in this State without complying with all the provisions in this article, which injunction may be issued without bond or advance cost.

(1927, c. 53, s. 10; 1939, c. 284, s. 3.)

SEC. 106-62. *Seizure of Articles*.—(a) When any paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide is found to be sold, offered or exposed for sale in this State in violation of any provisions of this article; or whenever a duly authorized agent of the Department of Agriculture finds he has probable cause to believe that any insecticide or fungicide is being sold, offered or exposed for sale in this State in violation of any provisions of this article, he shall affix to such insecticide or fungicide a tag, appropriate marking, or shall post a notice on the premises in which said insecticide or fungicide is located, giving notice that such insecticide or fungicide is suspected of being sold, offered or exposed for sale in violation of the provisions of this article or that the same is being sold, offered or exposed for sale in violation of the provisions of this article, and that the same has been detained or embargoed, and warning all persons not to remove or dispose of such paris green, calcium arsenate, lead arsenate or other insecticide or fungicide by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed insecticide or fungicide by sale or to offer to expose same for sale without such permission.

(b) When an insecticide or fungicide detained or embargoed under subsection (a) has been found by such agent to be sold, offered or exposed for sale in violation of any provisions of this article he shall petition the judge of any recorder's, county or superior court in whose jurisdiction the insecticide or fungicide is detained or embargoed for an order of condemnation of such insecticide or fungicide. When such agent has found that such insecticide or fungicide so detained or embargoed is not being sold, offered or exposed for sale in violation of any of the provisions of this article he shall remove the tag, marking or notice.

(c) If the court finds that the detained or embargoed insecticide or fungicide is being sold, offered or exposed for sale in violation of any of the provisions of this article such insecticide and fungicide shall, after entry of the decree of the court, be destroyed at the expense of the claimant thereof, under the supervision of such agent and all court costs and fees and storage and other proper expenses, shall be taxed against the claimant of such article or his agent: *Provided*, that if any insecticide or fungicide can be corrected by proper labeling or processing or by any other correction so that the same will comply with the provisions of this article, and court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such insecticide or fungicide shall be so labeled, processed or corrected, has been executed, may by order direct that such insecticide or fungicide be delivered to the claimant thereof for such labeling, processing or correction under the supervision of

an agent of the Department of Agriculture. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant on representation to the court by the Department of Agriculture that the insecticide or fungicide is no longer in violation of this Article, and that the expenses of such supervision have been paid.

(1927, c. 53, s. 11; 1945, c. 668.)

SEC. 106-63. *Copy of Analysis in Evidence.*—A copy of the analysis made by any chemist of the Department of Agriculture of any paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide certified to by him shall be admissible as evidence in any court of the State on trial of any issue involving the merits of the insecticides and fungicides covered by this article.

(1927, c. 53, s. 12.)

SEC. 106-64. *Articles in Transit.*—Nothing contained in this article shall interfere with paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide passing through the State in transit, nor shall it apply to the delivery of materials to manufacture paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide for manufacturing purposes.

(1927, c. 53, s. 13.)

SEC. 106-65. *Violation of Article.*—Any manufacturer or dealer violating any provision or section in this article, or any rule, regulation or standard of the Department of Agriculture promulgated under this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars nor more than two hundred and fifty dollars for each offense.

(1927, c. 53, s. 14.)

CHAPTER VI

LABOR LAWS AND REGULATIONS

(1) Maximum Working Hours

SECTION 95-15. *Title of Article.*—This article shall be known and may be cited as the "Maximum Hour Law."

(1937, c. 409, s. 1.)

SEC. 95-16. *Declaration of Public Policy; Enactment Under Police Power.*—As a guide to interpretation and application of this article, the public policy of this state is declared as follows: The relationship of hours of labor to the health, morals and general welfare of the people is a subject of general concern which requires appropriate legislation to limit hours of labor to promote the general welfare of the people of the state without jeopardizing the competitive position of North Carolina business and industry.

The general assembly, therefore, declares that in its considered judgment the general welfare of the state requires enactment of this law under the police power of the state.

(1937, c. 409, s. 2.)

SEC. 95-17. *Limitations of Hours of Employment; Exceptions.*—No employer shall employ a female person for more than forty-eight hours in any one week or nine hours in any one day, or on more than six days in any period of seven consecutive days.

No employer shall employ a male person for more than fifty-six hours in any one week, or more than twelve days in any period of fourteen consecutive days or more than ten hours in any one day, except that in case where two or more shifts of eight hours each or less per day are employed, any shift employee may be employed not to exceed double his regular shift hours in any one day whenever a fellow employee in like work is prevented from working because of illness or other cause: *Provided*, that any male person employed working in excess of fifty-five hours in any one week shall be paid time and a half at their regular rate of pay for such excess hours: *Provided*, in case of emergencies, repair crews, engineers, electricians, firemen, watchmen, office and supervisory employees and employees engaged in hereinafter defined continuous process operations and in work, the nature of which prevents second shift operations, may be employed for not more than sixty hours in any one week: *Provided, also*, that the ten hours per day maximum shall not apply to any employee when his employment is required for a longer period on account of an emergency due to breakdown, installation or alteration of equipment: *Provided*, that boys over fourteen years of age delivering newspapers on fixed routes and working not more than twenty-four hours per week, and watchmen may be employed seven days per week: *Provided further*, that from the eighteenth of December to and including the following twenty-fourth of December and for two periods of one week's duration each during the year for purpose of taking inventory,

female persons over sixteen years of age in mercantile establishments may be employed not to exceed ten hours in any one day: *Provided further*, that female persons engaged in the operation of seasonal industries in the process of conditioning and preserving perishable or semi-perishable commodities may be employed for not more than ten hours in any one day and not more than fifty-five hours in any one week.

No provision in this article shall be deemed to authorize the employment of any minor in violation of the provisions of any law expressly regulating the hours of labor of minors or of any regulations made in pursuance of such laws.

Where the day is divided into two or more work periods for the same employee, the employer shall provide that all such periods shall be within twelve consecutive hours, except that in the case of employees of motion picture theatres, restaurants, dining rooms, and public eating places, such periods shall be within fourteen consecutive hours:

Provided, that the transportation of employees to and from work shall not constitute any part of the employees' work hours.

Nothing in this section or any other provisions of this article shall apply to the employment of persons in agricultural occupations, ice plants, cotton gins and cottonseed oil mills or in domestic service in private homes and boarding houses, or in the work of persons over eighteen years of age in bona fide office, foremanship, clerical or supervisory capacity, executive positions, learned professions, commercial travelers, motion picture theatres, seasonal hotels and club houses, commercial fishing or tobacco redrying plants, tobacco warehouses, employers employing a total of not more than eight persons in each place of business, charitable institutions and hospitals: *Provided further*, that nothing in this section or in any other provision of this article shall apply to railroads, common carriers and public utilities subject to the jurisdiction of the interstate commerce commission or the North Carolina utilities commission and utilities operated by municipalities or any transportation agencies now regulated by the federal government: *Provided*, nothing in this article shall apply to the state or to municipal corporations or their employees, or to employees in hotels.

When, by reason of a seasonal rush of business, any employer finds or believes it to be necessary that the employees of his or its manufacturing plant shall work for more than fifty-six hours per week, the employer may apply to the commissioner of labor of the state of North Carolina for permission to allow the employees of such establishment to work a greater number of hours than fifty-six for a definite length of time not exceeding sixty days; and the commissioner, after investigation, may, in his discretion, issue such permit on the condition that all such employees shall receive one and one-half times the usual compensation for all hours worked over fifty-six per week: *Provided*, this shall not apply to the hours of any female person or any person under the age of eighteen years: *Provided further*, employees in laundries and dry cleaning establishments shall not be employed more than fifty-five hours in any one week: *Provided further*, nothing contained in this article shall be construed to limit the hours of employment of any outside salesmen on commission basis. *Provided*, that this article shall not apply to male clerks in mercantile establishments. *Provided*, that

this article shall not apply to retail or wholesale florists nor to employees of retail or wholesale florists during the following periods of each year: one week prior to and including Easter, one week prior to and including Christmas, and one week prior to and including Mother's Day.

(1937, cc. 406, 409, s. 3; 1939, c. 312, s. 1; 1943, c. 59.)

SEC. 95-18. *Definitions.*—Whenever used in this article

(a) "Employ" includes permit or suffer to work.

(b) "Employer" includes every person, firm, corporation, partnership, stock association, agent, manager, representative or foreman, or other person having control or custody of any employment, place of employment or of any employee.

(c) "Day" includes any period of twenty-four consecutive hours.

(d) "Continuous process operations" includes bleaching, dyeing, finishing, redrying, dry kiln operations, and any other processing requiring continuous handling or work for completion.

(1937, c. 409, s. 4.)

SEC. 95-19. *Posting of Law.*—Every employer shall post and keep conspicuously posted in or about the premises wherein any employee is employed, a printed abstract of this article to be furnished by the state commissioner of labor upon request.

(1937, c. 409, s. 5.)

SEC. 95-20. *Time Records Kept by Employers.*—Every employer shall keep a time book and/or record which shall state the name and occupation of each employee employed and which shall indicate the number of hours worked by him or her on each day of the week, and the amount of wages paid each pay period to each such employee. Such time book and/or record shall be kept on file at least one year after the entry of the record. The state commissioner of labor or his duly authorized representative shall, for the purpose of examination, have access to and the right to copy from such time book and/or record for the purpose of prosecuting violations of the provisions of the article. Any employer who fails to keep such time book and/or record, or knowingly and intentionally makes any false statement therein, or refuses to make such time book and/or record accessible, upon request, to the state commissioner of labor or his duly authorized representative shall be deemed to have violated this section.

(1937, c. 409, s. 6.)

SEC. 95-21. *Enforcement by Commissioner of Labor.*—It shall be the duty of the state commissioner of labor to enforce all the provisions of this article. The state commissioner of labor and his duly authorized representatives shall have the power and authority to enter any place of employment, and, in the enforcement of this article, the state commissioner of labor and his authorized representatives may enter and inspect as often as practicable all such places of employment. They may investigate all complaints of violations of this article received by them, and may institute prosecutions as hereinafter provided for violations of this article.

(1937, c. 409, s. 7.)

SEC. 95-22. *Interference with Enforcement Prohibited.*—No person shall hinder or delay the state commissioner of labor or any of his authorized representatives in the performance of his duties; nor shall any person refuse to admit to, or lock out from, any place of employment the state commissioner of labor or any of his authorized representatives, or refuse to give the state commissioner of labor or his authorized representatives information required for the proper enforcement of this article.

(1937, c. 409, s. 8.)

SEC. 95-23. *Violation a Misdemeanor.*—Any person who, whether on his own behalf or for another, or through an agent, manager, representative, foreman or other person, shall knowingly and intentionally violate any provisions of this article, shall be guilty of a misdemeanor.

(1937, c. 409, s. 9.)

SEC. 95-24. *Penalties.*—Whoever knowingly and intentionally violates any provisions of Section 95-17, upon complaint lodged by the state commissioner of labor, shall be punished by a fine of not less than ten (\$10.00) dollars nor more than fifty (\$50.00) dollars, or by imprisonment for not more than thirty days in the discretion of the court; and whenever any person shall have been notified by the state commissioner of labor of his authorized representative, or by the service of a summons in a prosecution, that he is violating such provision, he shall be subject to like penalties in addition for each and every day that such violation shall have been continued after such notification.

Whoever knowingly and intentionally violates any of the provisions of Sections 95-19, 95-20, or 95-22 of this article shall be punished, for the first offense, by a fine of not less than five (\$5.00) dollars nor more than twenty-five (\$25.00) dollars, or imprisonment for not more than thirty days, in the discretion of the court, and whenever any person shall have been notified by the state commissioner of labor or his authorized representative that he is violating such provisions, and shall have been given a reasonable time in which to remedy the conditions which shall constitute such violations, he shall be subject to like penalties in addition to the penalties aforesaid, for each and every day that such violation shall have continued after the expiration of the time allowed by the state commissioner of labor or his authorized representative for remedying the aforesaid conditions.

(1937, c. 409, s. 10.)

SEC. 95-25. *Intimidating Witnesses.*—Whoever shall, by force, intimidation, threat of procuring dismissal from employment, or by any other manner whatsoever, induce or attempt to induce an employee to refrain from giving testimony in any investigation or proceeding relating to or arising under this article, or whoever discharges or penalizes any employee for so testifying, shall be subject to a fine of not less than ten (\$10.00) dollars nor more than fifty (\$50.00) dollars, or by imprisonment for not more than thirty days.

(1937, c. 409, s. 11.)

(2) Various Labor Regulations

SECTION 95-26. *Week's Work of Women To Be Fifty-Five Hours.*—Not more than fifty-five hours shall constitute a week's work for women over sixteen in any laundry, dry-cleaning establishment, pressing club, workshop, factory, manufacturing establishment, or mill, of the State, and no woman over sixteen employed in any of the above-named places shall be worked exceeding eleven hours in any one day or over fifty-five hours in any one week. Any employer of labor violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days, and each day's work exceeding the said hours shall constitute a separate offense. *Provided*, that this section shall not apply to those employed in the operation of seasonal industries in their process of conditioning and of preserving perishable or semi-perishable commodities, or to those engaged in agricultural work. *Provided, further*, that this section shall not apply to retail or wholesale florists nor to employees of retail or wholesale florists during the following periods of each year: one week prior to and including Easter, one week prior to and including Christmas, and one week prior to and including Mother's Day.

(1915, c. 148, s. 2; 1931, c. 289; 1935, c. 406; 1939, c. 312, s. 2; C.S. 6554.)

SEC. 95-27. *Hours of Work for Women in Certain Industries.*—It shall be unlawful for any person, firm, or corporation, proprietor or owner of any retail, or wholesale mercantile establishment or other business where any female help is employed for the purpose of serving the public in the capacity of clerks, salesladies or waitresses and other employees of public eating places, to employ or permit to work any female longer than ten hours in any one day or over fifty-five hours in any one week; nor shall any female be employed or permitted to work for more than six hours continuously at any one time without an interval of at least half an hour except where the terms of employment do not call for more than six and a half hours in any one day or period.

Nothing in this section shall be construed to apply to females whose full time is employed as bookkeepers, cashiers or office assistants or to any establishment that does not have in its employment three or more persons at any one time.

Every employer shall post in a conspicuous place in every room of the establishment in which females are employed a printed notice stating the provisions of this section and the hours of labor. The printed forms of such notice shall be furnished, upon request, by the commissioner of labor.

Any employer of labor violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding one hundred dollars or imprisoned not exceeding sixty days and each day's work exceeding the said hours shall constitute a separate offense.

(1933, c. 35; 1935, c. 407.)

SEC. 95-28. *Working Hours of Employees in State Institutions.*—It shall be unlawful for any person or official or foreman or other person in authority in the state hospital at Raleigh, the state hospital at Morganton,

the state hospital at Goldsboro, or any penal or correctional institution of the State of North Carolina, excepting the state prison and institutions under the control of the state commission of highways and public works, to require any employee to work for a greater number of hours than twelve (12) during any twenty-four (24) hour period, or not more than eighty-four (84) hours during any one week, or permit the same, during which period the said employee shall be permitted to take one continuous hour off duty; except in case of an emergency as determined by the superintendent, in which case the limitation of twelve (12) hours in any consecutive twenty-four (24) shall not apply. Nothing in this section shall be construed to effect the hours of doctors and superintendents in these hospitals. Any violation of this section shall be a misdemeanor, punishable within the discretion of the court.

(1935, c. 136.)

SEC. 95-29. *Seats for Women Employees; Failure to Provide, a Misdemeanor.*—All persons, firms, or corporations who employ females in a store, shop, office, or manufacturing establishment, as clerks, operatives, or helpers in any business, trade, or occupation carried on or operated in the state of North Carolina, shall be required to procure and provide proper and suitable seats for all such females, and shall permit the use of such seats, rests, or stools as may be necessary, and shall not make any rules, regulations, or orders preventing the use of such seats, stools, or rests when any such female employee or employees are not actively employed or engaged in their work in such business or employment.

If any employer of female help fails to provide seats, as required in this article, or makes any rules, orders or regulations in his or its shop, store, or other places of business requiring females to remain standing when not necessarily employed or engaged in service or labor therein, he shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by fine or imprisonment, or both, within the discretion of the court.

The Commissioner of Labor, or his duly authorized agents, may at any time enter and inspect all stores, shops, offices, or manufacturing or other establishments coming within the provisions of this section, and he may make such rules and regulations as he deems necessary to enforce the provisions of this section. It shall be unlawful for any person, firm or corporation to refuse permission to enter, obstruct, or prevent any duly authorized agent of the commissioner in his effort to make the inspection herein provided for.

(1909, c. 857, ss. 1, 2; 1919, c. 100, s. 12; C.S. 6555.)

(3) Separate Toilets for Sexes and Races

SECTION 95-48. *When Separate Toilet Required; Penalty.*—All persons and corporations employing males and females in any manufacturing industry, or other business employing more than two males and females in towns and cities having a population of one thousand persons or more, and where such employees are required to do indoor work chiefly, shall provide and keep in a cleanly condition separate and distinct toilet rooms for such employees, said toilets to be lettered and marked in a distinct manner so as

to furnish separate facilities for white males, white females, colored males and colored females: *Provided*, that the provisions of this section shall not apply to cases where toilet arrangements or facilities are furnished by said employer off the premises occupied by him.

(1913, c. 83, s. 1; C.S. 6559.)

SEC. 95-49. *Location; Intruding on Toilets Misdemeanor.*—It shall be the duty of the persons or corporations mentioned under this article to locate their toilets for males and females, white and colored, in separate parts of their buildings or grounds in buildings hereinafter erected, and in those now erected all closets shall be separated by substantial walls of brick or timber, and any employee who shall wilfully intrude upon or use any toilet not intended for his or her sex or color shall be guilty of a misdemeanor and upon conviction shall be fined five dollars.

(1931, c. 83, s. 4; C.S. 6560.)

SEC. 95-50. *Punishment for Violation of This Article.*—If any person, firm, or corporation refuses to comply with the provisions of this article, he or it shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court.

(1913, c. 83, s. 2; 1919, c. 100, s. 12; C.S. 6561.)

SEC. 95-51. *Police in Towns to Enforce Article.*—The police officers of any town or city shall investigate the places of business of any person or corporation employing males and females and see that the provisions of this article are put in force, and shall swear out a warrant before the mayor or other proper officer of any town or city and prosecute all persons, corporations, and managers of corporations violating any of the provisions of this article.

(1913, c. 83, s. 3; C.S. 6562.)

SEC. 95-52. *Sheriff in County to Enforce Article.*—When any persons or corporations locate their manufacturing plant or other business outside any city or town, the sheriff of the county shall investigate the condition of the toilets used by such manufacturing plant or business and see that the provisions of this article are complied with, and shall swear out a warrant before a justice of the peace and prosecute any one violating the provisions of this article.

(1913, c. 83, s. 5; C.S. 6563.)

SEC. 95-53. *Enforcement by Department of Labor.*—The department of labor shall investigate the places of business of any person or corporation employing males and females, and shall make such rules and regulations for enforcing and carrying out this article as may be necessary.

(1919, c. 100, s. 7; 1931, c. 312, ss. 12, 14; C.S. 6563 (a).)

(4) Child Labor Regulations

SECTION 110-1. *Minimum Age.*—No minor under sixteen years of age shall be employed, permitted or allowed to work in, about, or in connection with any gainful occupation at any time: *Provided*, that minors between

fourteen and sixteen years of age may be employed outside school hours and during school vacations, but not in a factory or in any occupation otherwise prohibited by law: and *Provided*, that boys twelve years of age and over securing a certificate from the department of labor, may be employed outside school hours in the sale or distribution of newspapers, magazines or periodicals subject to the provisions of Section 110-8 relating to employment of minors in street trades and to such rules and regulations as may be provided under Section 95-11. Nothing in this article shall be construed to apply to the employment of a minor engaged in domestic or farm work performed under the direction or authority of the minor's parent or guardian.

(1937, c. 317, s. 1.)

SEC. 110-2. *Hours of Labor*.—No minor under sixteen years of age shall be employed, permitted or allowed to work in, about or in connection with any gainful occupation more than six consecutive days in any one week, or more than forty hours in any one week, or more than eight hours in any one day, nor shall any minor under sixteen years of age be so employed, permitted or allowed to work before seven o'clock in the morning or after six o'clock in the evening of any day. No minor over sixteen years of age and under eighteen years of age shall be employed, permitted or allowed to work in or about or in connection with any gainful occupation for more than six consecutive days in any one week, or more than forty-eight hours in any one week, or more than eight hours in any one day, nor shall any minor between sixteen and eighteen years of age be so employed, permitted or allowed to work before six o'clock in the morning or after twelve o'clock midnight of any day, except boys between the ages of sixteen and eighteen may be permitted to work until one o'clock in the morning as messengers where the offices of the company for which they work do not close before that hour: *Provided*, that no girl between sixteen and eighteen years of age shall be so employed, permitted, or allowed to work before six o'clock in the morning or after nine o'clock in the evening of any day: and *Provided further*, that boys twelve years of age and over, employed in the sale or distribution of newspapers, magazines or periodicals outside school hours shall be subject to the provisions of Section 110-8 relating to employment of minors in street trades, and to such rules and regulations as may be provided under Section 95-11: *Provided further*, that minors under eighteen years of age may be employed in a concert or a theatrical performance, under such rules and regulations, as the state commissioner of labor may prescribe, up to twelve o'clock midnight; and *Provided further*, that telegraph messenger boys in towns where a full-time service is not maintained on Sundays may work seven days per week, but not for more than two hours on Sunday. The combined hours of work and hours in school of children under sixteen employed outside school hours shall not exceed a total of eight per day.

(1937, c. 317, s. 2.)

SEC. 110-3. *Lunch Period*.—No minor under sixteen years of age shall be employed or permitted to work for more than five hours continuously

without an interval of at least thirty minutes for a lunch period, and no period of less than thirty minutes shall be deemed to interrupt a continuous period of work.

(1937, c. 317, s. 3.)

SEC. 110-4. *Posting of Hours.*—Every employer shall post and keep conspicuously posted in the establishment wherein any minor under eighteen is employed, permitted, or allowed to work, a printed abstract of this article and a list of the occupations prohibited to such minors, to be furnished by the state department of labor.

(1937, c. 317, s. 4.)

SEC. 110-5. *Time Records.*—Every employer shall keep a time-book and/or record, which shall state the name of each minor employed, and which shall indicate the number of hours worked by said minor on each day of the week, and the amount of wages paid during each pay period. Such time record shall be kept on file for at least one year after the entry of the record, and shall be open to the inspection of the state department of labor.

(1937, c. 317, s. 5.)

SEC. 110-6. *Hazardous Occupations Prohibited for Minors Under Sixteen.*—No minor under sixteen years of age shall be employed, permitted or allowed to work on or in connection with power driven machinery. No minor under sixteen years of age shall be employed, permitted or allowed to work in or about or in connection with: Construction work of any kind, ship building, mines or quarries, stone cutting or polishing, the manufacture, transportation or use of explosives or highly inflammable substances, ore-reduction works, smelters, hot rolling mills, furnaces, founderies, forging shops or any other place in which the heating, melting or heat treatment of metals is carried on; lumbering or logging operations, saw or planing mills, pulp or paper mills, or in operating or assisting in operating punch presses or stamping machines, if the clearance between the ram and the die or the stripper exceeds one-fourth inch; power-driven wood-working machinery, cutting machines having a guillotine action, openers, pickers, cards or lappers, power shears, machinery having a heavy rolling or crust-action, corrugating, crimping, or embossing machines, meat grinding machines, dough-brakes or mixing machines in bakeries or cracker making machinery, grinding, abrasive, polishing or buffing machines: *Provided*, that apprentices operating under conditions of bona fide apprenticeship may grind their own tools; machinery used in the cold rolling of heavy metal stock, metal plate bending machines, power-driven metal planing machines, circular saws, power-driven laundry or dry cleaning machinery, oiling, cleaning or wiping machinery or shafting or applying belts to pulleys; or in the operation or repair of elevators or other hoisting apparatus, or as drivers of trucks or other motor vehicles, or in the operation of any unguarded machinery.

(1937, c. 317, s. 6.)

SEC. 110-7. *Hazardous Occupations Prohibited for Minors Under Eighteen.*—No minor under the age of eighteen years shall be employed,

permitted, or allowed to work at any processes where quartz or any other form of silicon dioxide or any asbestos silicate is present in powdered form, or at work involving exposure to lead or any of its compounds in any form, or at work involving exposure to benzol or any benzol compound which is volatile or which can penetrate the skin, or at work in spray painting, or in the handling of unsterilized hides or animal or human hair. Nor shall any minor under eighteen be employed or permitted to work in, about or in connection with any establishment where alcoholic liquors are distilled, rectified, compounded, brewed, manufactured, bottled, sold, or dispensed, or in a pool or billiard room: *Provided, however*, that this section shall not prohibit a minor under the age of eighteen years from working in an establishment where beer is sold and not consumed on the premises, and to which has been issued only an "off premises" license for the sale of beer. Nor shall any girl under the age of eighteen years be employed, permitted or allowed to work as a messenger in the distribution or delivery of goods or messages for any person, firm or corporation engaged in the business of transmitting or delivering goods or messages.

Nor shall any minor under eighteen years of age be employed, permitted or allowed to work in any place of employment, or at any occupation hazardous or injurious to the life, health, safety or welfare of such minor. It shall be the duty of the state department of labor and the said state department of labor shall have power, jurisdiction, and authority, after due notice and after hearings duly held, to issue general or special orders, which shall have the force of law, prohibiting the employment of such minors in any place of employment or at any occupation hazardous or injurious to the life, health, safety or welfare of such minors.

(1937, c. 317, s. 7; 1943, c. 670.)

SEC. 110-8. *Employment of Minors in Street Trades; Sale or Distribution of Newspapers, etc.*—No boy under fourteen years of age and no girl under eighteen years of age shall distribute, sell, expose or offer for sale newspapers, magazines, periodicals, candies, drinks, peanuts, or other merchandise in any street or public place, or exercise the trade of bootblack in any street or public place. No boy under sixteen years of age shall be employed or permitted or allowed to work at any of the trades or occupations mentioned in this section after seven p. m. or before 6 a. m., or unless he has an employment certificate issued in accordance with Section 110-9. The state commissioner of labor shall have authority to make, promulgate and enforce such rules and regulations as he may deem necessary for the enforcement of this section, not inconsistent with this article or existing law.

Nothing in this section shall be construed to prevent male persons over fourteen years of age from distributing newspapers, magazines and periodicals on fixed routes, seven days per week: *Provided*, that such persons shall not be employed nor allowed to work after eight o'clock p. m. and before five o'clock a. m., and that the hours of work and the hours in school do not exceed eight in any one day, except boys twelve years of age and over who have secured a certificate from the department of labor for the sale and distribution of newspapers, magazines or periodicals: *Provided, further*, that such person shall not be permitted or allowed to work more than four

hours per day nor more than twenty-four hours per week: *Provided further*, that nothing in this article shall be construed to prevent boys twelve years of age and over, upon securing a proper certificate from the department of labor, from being employed outside school hours in the sale or distribution of newspapers, magazines and periodicals (where not more than seventy-five customers are served in one day): *Provided*, that such boys shall not be employed between the hours of seven o'clock p. m., and six o'clock a. m., nor for more than ten hours in any one week.

(1937, c. 317, s. 8.)

SEC. 110-9. *Employment Certificate Required.*—Before any minor under eighteen years of age shall be employed, permitted or allowed to work in, about or in connection with any gainful occupation, the person employing such minor shall procure and keep on file an employment certificate for such minor, issued as hereinafter prescribed. In case of a minor engaged in street trade where the relationship of employer and employee does not exist between such minor and the supplier of the merchandise which the minor sells, the parent or guardian of such minor shall be deemed the employer of such minor and shall procure and keep on file the employment certificate herein required.

(1937, c. 317, s. 9.)

SEC. 110-10. *Officers Authorized to Issue Certificates.*—The employment certificate required by this article shall be issued only by county or city superintendents of public welfare in such form and under such conditions as may be prescribed by the state department of labor.

(1937, c. 317, s. 10.)

SEC. 110-11. *Refusal and Revocation of Employment Certificate.*—The person designated to issue employment certificates may refuse to grant such certificate, or may revoke such certificate after issuance if, in his judgment, the best interests of the minor would be served by such refusal or revocation. Employer, parent or guardian of the minor whose employment certificate has been refused or revoked may appeal to the commissioner of labor.

(1937, c. 317, s. 11.)

SEC. 110-12. *Method of Issuing Employment Certificate.*—The person designated to issue employment certificates shall issue such certificates only upon the application in person of the minor desiring employment, and after having approved and filed the following papers:

(1) A promise of employment signed by the prospective employer or by some one duly authorized by him, setting forth the specific nature of the occupation in which he intends to employ such minor, and the number of hours per day and days per week which said minor shall be employed.

(2) Evidence of age showing that minor is of the age required by this article, which evidence shall consist of one of the following proofs of age and shall be required in the order herein designated, as follows:

(a) A duly attested transcript of the birth certificate filed according to law with the registrar of vital statistics, or other officer charged with the duty of recording births, or

(b) A baptismal certificate or transcript of the record of baptism, duly certified, and showing the date and place of birth; or

(c) Other documentary record of age (other than a school record or an affidavit of age) such as a Bible record, passport or transcript thereof, duly certified, or life insurance policy which shall appear to the satisfaction of the issuing officer to be good and sufficient evidence of age; or

(d) In the case none of the aforesaid proofs of age shall be obtainable, and only in such case, the issuing officer may accept the signed statement of the physician authorized to make the physical examinations required by this section, stating that, after examination, it is his opinion that the minor has attained the age required by law for the occupation in which he expects to engage. Such statement shall be accompanied by an affidavit, signed by the minor's parents or guardian, certifying to the name, date and place of birth of the minor that the proofs of age specified in the preceding sub-divisions of this section cannot be produced.

(3) A statement of physical fitness, signed by a public health, public school or other physician assigned to this duty by the issuing officer with the approval of the state department of labor, setting forth that such minor has been thoroughly examined by such physician and that he is either physically fit to be employed in any legal occupation, or that he is physically fit to be employed under certain limitations, specified in the statement. If the statement of physical fitness is limited, the employment certificate issued thereon shall state clearly the limitations upon its use, and shall be valid only when used under the limitations so stated. The minor shall not be charged a fee for such examination or statement of physical fitness. The method of making such examinations shall be prescribed by the state department of labor.

(4) A school record signed by the principal of the school which the minor last attended or by some one duly authorized by him, giving the full name, date of birth, grade last completed, and residence of the minor.

The employment certificate shall be delivered to the prospective employer of the minor for whom the employment certificate is issued, and such certificate shall be valid only for the employer named therein and for the occupation designated in the promise of employment.

(1937, c. 317, s. 12.)

SEC. 110-13. *Employment Certificate as Evidence.*—Said employment certificate duly issued shall be conclusive evidence of the age of the minor for whom issued in any proceeding involving the employment of the minor under the child labor or workmen's compensation law or any other labor law of the state, as to any act occurring subsequent to its issuance.

(1937, c. 317, s. 13.)

SEC. 110-14. *Regular and Vacation Employment Certificates.*—Employment certificates shall be of two kinds, regular certificates permitting employment during school hours, and vacation certificates, permitting employ-

ment during the school vacation and during the school term at such time as the public schools are not in session.

(1937, c. 317, s. 14.)

SEC. 110-15. *Duties of Employers in Regard to Employment Certificates.*—Every employer receiving an employment certificate shall, during the period of the minor's employment, keep such certificate on file at the place of employment and accessible to any certificate—issuing officer, attendance officer, inspector, or other person authorized to enforce this article. The failure of any employer to produce for inspection such employment certificate shall be prima facie evidence of the unlawful employment of the minor.

(1937, c. 317, s. 15.)

SEC. 110-16. *Certificates of Age.*—Upon request, it shall be the duty of the officer authorized to issue employment certificates to issue to any person between the ages of eighteen and twenty-one desiring to enter employment a certificate of age upon presentation of the same proof of age as is required for the issuance of employment certificates under this article, and such certificate duly issued shall be conclusive evidence of the age of the minor for whom issued in any proceeding involving the employment of the minor under the child labor or workmen's compensation law or any other labor law of the state, as to any act occurring subsequent to its issuance.

(1937, c. 317, s. 16.)

SEC. 110-17. *State Supervision of the Issuance of Employment Certificates.*—The state department of labor shall prescribe such rules and regulations for the issuance of employment certificates and age certificates as will promote uniformity and efficiency in the administration of this article. It also shall supply to local issuing officers all blank forms to be used in connection with the issuance of such certificates. Duplicates of each employment or age certificate shall be mailed by the issuing officer to the state department of labor within one week after issuance. The state department of labor may revoke any such certificate if in its judgment it was improperly issued or if the minor is illegally employed. If the certificate be revoked, the issuing officer and the employer shall be notified of such action in writing, and such minor shall not thereafter be employed or permitted to work until a new certificate has been legally obtained.

(1937, c. 317, s. 17.)

SEC. 110-18. *Rules and Regulations.*—The commissioner of labor of North Carolina shall have the power to make such rules and regulations for enforcing and carrying out the provisions of this article as may be deemed necessary by said commissioner.

(1937, c. 317, s. 18.)

SEC. 110-19. *Inspection and Prosecutions.*—It shall be the duty of the state department of labor and of the inspectors and agents of said state department of labor to enforce the provisions of this article, to make complaints against persons violating its provisions, and to prosecute violations of the same. The said state department of labor, its inspectors and agents

shall have authority to enter and inspect at any time any place or establishment covered by this article, and to have access to employment certificates kept on file by the employer and such other records as may aid in the enforcement of this article. School attendance officers are likewise empowered to visit and inspect places where minors may be employed.

Any person authorized to enforce this article may require an employer of a minor for whom an employment certificate is not on file to either furnish him within ten days the evidence required for an employment certificate showing that the minor is at least eighteen years of age, or to cease to employ or permit or allow such minor to work.

(1937, c. 317, s. 19.)

SEC. 110-20. *Penalties.*—Whoever employs or permits or allows any minor to be employed or to work in violation of this article, or of any order or ruling issued under the provisions of this article, or obstructs the state department of labor, its officers or agents, or any other persons authorized to inspect places of employment under this article, and whoever having under his control or custody any minor, permits or allows him to be employed or to work in violation of this article, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00), or imprisonment for not more than thirty days, or both such fine and imprisonment. Each day during which any violation of this article continues after notice from the state department of labor to the proprietor, manager, or other officer of the partnership, firm or corporation, shall constitute a separate and distinct offense, and the employment of any minor in violation of the article, shall, with respect to each minor so employed, constitute a separate and distinct offense. The penalties specified in this article may be recovered by the state in an action for debt brought before any court of competent jurisdiction, or through criminal proceedings, as may be deemed proper.

(1937, c. 317, s. 20.)

CHAPTER VII

MISCELLANEOUS REGULATORY LAWS

(1) Lotteries

SECTION 14-289. *Advertising Lotteries.*—If any one, by writing or printing or by circular or letter or in any other way, advertise or publish an account of a lottery, whether within or without this state, stating how, when or where the same is to be or has been drawn, or what are the prizes therein or any of them, or the price of a ticket or any share or interest therein, or where or how it may be obtained, he shall be guilty of a misdemeanor.

(Rev., s. 3725; 1887, c. 211; C.S. 4427.)

SEC. 14-290. *Dealing in Lotteries.*—If any person shall open, set on foot, carry on, promote, make or draw, publicly or privately, a lottery, by whatever name, style or title the same may be denominated or known; or if any person shall, by such way and means, expose or set to sale any house, real estate, goods, chattels, cash, written evidence of debt, certificates of claims or any other thing of value whatsoever, every person so offending shall be guilty of a misdemeanor, and shall be fined not exceeding two thousand dollars or imprisoned not exceeding six months, or both, in the discretion of the court. Any person who engages in disposing of any species of property whatsoever, including money and evidences of debt, or in any manner distributes gifts or prizes upon tickets, bottle crowns, bottle caps, seals on containers, other devices or certificates sold for that purpose, shall be held liable to prosecution under this section. Any person who shall have in his possession any tickets, certificates or orders used in the operation of any lottery shall be held liable under this section, and the mere possession of such tickets shall be prima facie evidence of the violation of this section.

(Rev., s. 3726; Code, s. 1047; R. C., c. 34, s. 69; 1834, c. 19, s. 1; 1874-5, c. 96; 1933, c. 434; 1937, c. 157; C.S. 4428.)

SEC. 14-291. *Selling Lottery Tickets and Acting as Agent for Lotteries.*—If any person shall sell, barter or otherwise dispose of any lottery ticket or order for any number of shares in any lottery, or shall in anywise be concerned in such lottery, by acting as agent in the state for or on behalf of any such lottery, to be drawn or paid either out of or within the state, such person shall be guilty of a misdemeanor, and shall be punished as provided for in section 14-290.

(Rev., s. 3727; Code, s. 1048; R. C., c. 34, s. 70; 1834, c. 19, s. 2; C.S. 4429.)

SEC. 14-291.1. *Selling "Numbers" Tickets; Possession Prima Facie Evidence of Violation.*—If any person shall sell, barter or cause to be sold or bartered, any ticket, token, certificate or order for any number of shares in any lottery, commonly known as the numbers or butter and egg lottery, or lotteries of similar character, to be drawn or paid within or without the state, such person shall be guilty of a misdemeanor and shall be punished by fine or imprisonment, or both, in the discretion of the court. Any person who shall have in his possession any tickets, tokens, certificates or orders

used in the operation of any such lottery shall be guilty under this section and the possession of such tickets shall be prima facie evidence of the violation of this section.

(1943, c. 550.)

(2) Slot Machine Law

SECTION 14-301. *Operation or Possession of Slot Machine; Separate Offenses.*—It shall be unlawful for any person, firm or corporation to operate, keep in his possession or in the possession of any other person, firm or corporation, for the purpose of being operated, any slot machine that shall not produce for or give to the person who places coin or money, or the representative of either, the same return in market value each and every time such machine is operated by placing money or coin or the representative of either therein. Each time said machine is operated as aforesaid, shall constitute a separate offense.

(1923, c. 138, ss. 1, 2, C.S. 4437 (a).)

SEC. 14-302. *Punchboards, Vending Machines, and Other Gambling Devices; Separate Offenses.*—It shall be unlawful for any person, firm or corporation to operate or keep in his possession, or the possession of any other person, firm or corporation, for the purpose of being operated, any punch-board, machine for vending merchandise, or other gambling device, by whatsoever name known or called, that shall not produce for or give to the person operating, playing or patronizing same, whether personally or through another, by paying money or other thing of value for the privilege of operating, playing or patronizing same, whether through himself or another, the same return in market value, each and every time such punch-board, machine for vending merchandise, or other gambling device, by whatsoever name known or called, is operated, played or patronized by paying of money or other thing of value for the privilege thereof. Each time said punch-board, machine for vending merchandise, or other gambling device, by whatsoever name known or called, is operated, played, or patronized by the paying of money or other thing of value therefor, shall constitute a separate violation of this section as to operation thereunder.

(1923, c. 138, ss. 3, 4; C.S. 4437 (b).)

SEC. 14-303. *Violation of Two Preceding Sections a Misdemeanor.*—A violation of any of the provisions of sections 14-301, 14-302 shall be a misdemeanor punishable by a fine or imprisonment, or, in the discretion of the court, by both.

(1923, c. 138, s. 5; C.S. 4437 (c).)

SEC. 14-304. *Manufacture, Sale, Etc., of Slot Machines and Devices.*—It shall be unlawful to manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give away, or to permit the operation of, or for any person to permit to be placed, maintained, used or kept in any room, space or building owned, leased or occupied by him or under his management or control, any slot machine or device.

(1937, c. 196, s. 1.)

SEC. 14-305. *Agreements with Reference to Slot Machines or Devices Made Unlawful.*—It shall be unlawful to make or permit to be made with any person any agreement with reference to any slot machines or device, pursuant to which the user thereof may become entitled to receive any money, credit, allowance, or anything of value or additional chance or right to use such machines or devices, or to receive any check, slug, token or memorandum entitling the holder to receive any money, credit, allowance or thing of value.

(1937, c. 196, s. 2.)

SEC. 14-306. *Slot Machine or Device Defined.*—Any machine, apparatus or device is a slot machine or device within the provisions of sections 14-304 through 14-309, if it is one that is adapted, or may be readily converted into one that is adapted, for use in such a way that, as a result of the insertion of any piece of money or coin or other object, such machine or device is caused to operate or may be operated in such manner that the user may receive or become entitled to receive any piece of money, credit, allowance or thing of value, or any check, slug, token or memorandum, whether of value or otherwise, or which may be exchanged for any money, credit, allowance or any thing of value, or which may be given in trade, or the user may secure additional chances or rights to use such machine, apparatus or device; or in the playing of which the operator or user has a chance to make varying scores or tallies upon the outcome of which wagers may be made, irrespective of whether it may, apart from any element of chance or unpredictable outcome of such operation, also sell, deliver, or present some merchandise, indication of weight, entertainment or other thing of value. This definition is intended to embrace all slot machines and similar devices except slot machines in which is kept any article to be purchased by depositing any coin or thing of value, and for which may be had any article of merchandise which makes the same return or returns of equal value each and every time it is operated, or any machine wherein may be seen any pictures or heard any music by depositing therein any coin or thing of value, or any slot weighing machine or any machine for making stencils by the use of contrivances operated by depositing in the machine any coin or thing of value, or any lock operated by slot wherein money or thing of value, is to be deposited, where such slot machines make the same return or returns of equal value each and every time the same is operated and does not at any time it is operated offer the user or operator any additional money, credit, allowance, or thing of value, or check, slug, token or memorandum, whether of value or otherwise which may be exchanged for money, credit allowance or thing of value or which may be given in trade or by which the user may secure additional chances or rights to use such machine, apparatus, or device, or in the playing of which the operator does not have a chance to make varying scores or tallies.

(1937, c. 196, s. 3.)

SEC. 14-307. *Issuance of License Prohibited.*—There shall be no state, county, or municipal tax levied for the privilege of operating the machines or devices the operation of which is prohibited by sections 14-304 through 14-309.

(1937, c. 196, s. 4.)

SEC. 14-308. *Declared a Public Nuisance*.—An article or apparatus maintained or kept in violation of sections 14-304 through 14-309 is a public nuisance.

(1937, c. 196, s. 5.)

SEC. 14-309. *Violation Made Misdemeanor*.—Any person who violates any provision of sections 14-304 through 14-309 is guilty of a misdemeanor and upon conviction shall be fined, or imprisoned in the discretion of the court.

(1937, c. 196, s. 6.)

(3) Abortion and Kindred Offenses

SECTION 14-44. *Using Drugs or Instruments to Destroy Unborn Child*.—If any person shall willfully administer to any woman, either pregnant or quick with child, or prescribe for any such woman, or advise or procure any such women to take any medicine, drug or other substance whatever, or shall use or employ any instrument or other means with intent thereby to destroy such child, unless the same shall be necessary to preserve the life of the mother, he shall be guilty of a felony, and shall be imprisoned in the state's prison for not less than one year nor more than ten years, and be fined at the discretion of the court.

(Rev., s. 3618; Code, s. 975; 1881, c. 351, s. 1; C.S. 4226.)

SEC. 14-45. *Using Drugs or Instruments to Produce Miscarriage or Injure Pregnant Woman*.—If any person shall administer to any pregnant woman, or prescribe for any such woman, or advise and procure such woman to take any medicine, drug or anything whatsoever, with intent thereby to procure the miscarriage of such woman, or to injure or destroy such woman, or shall use any instrument or application for any of the above purposes, he shall be guilty of a felony, and shall be imprisoned in the jail or state's prison for not less than one year nor more than five years and shall be fined at the discretion of the court.

(Rev., s. 3619, Code, s. 976; 1881, c. 351, s. 2; C.S. 4227.)

SEC. 14-46. *Concealing Birth of Child*.—If any person shall, by secretly burying or otherwise disposing of the dead body of a new-born child, endeavor to conceal the birth of such child, such person shall be guilty of a felony, and punished by fine or imprisonment, or both, such imprisonment to be in the county jail or state's prison, at the discretion of the court: *Provided*, that the imprisonment in the state's prison shall in no case exceed a term of ten years: *Provided further*, that nothing in this section shall be construed to prevent the mother, who may be guilty of the homicide of her child, from being prosecuted and punished for the same according to the principles of the common law. Any person aiding, counseling or abetting any woman in concealing the birth of her child shall be guilty of a misdemeanor.

(Rev., s. 3623; Code, s. 1004; R. C., c. 34, s. 28; 1818, c. 985; 1883, c. 390; 21, Jac. I, c. 27. See 43 Geo. III, c. 58, s. 3; 9 Geo. IV, c. 31, s. 14; C.S. 4228.)

(4) Fraudulent Advertising Law

SECTION 14-117. *Fraudulent and Deceptive Advertising*.—It shall be unlawful for any person, firm, corporation or association, with intent to sell or in any wise to dispose of merchandise, securities, service or any other thing offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, on an interest therein, to make public, disseminate, circulate or place before the public or cause directly or indirectly to be made, published, disseminated, circulated or placed before the public in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill circular, pamphlet or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service or any other thing so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading: *Provided*, that such advertising shall be done willfully and with intent to mislead. Any person who shall violate the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

(1915, c. 218; C.S. 4290.)

(5) Worthless Checks

SECTION 14-106. *Obtaining Property in Return for Worthless Check, Draft or Order*.—Every person who, with intent to cheat and defraud another, shall obtain money, credit, goods, wares or any other thing of value by means of a check, draft or order of any kind upon any bank, person, firm or corporation, not indebted to the drawer, or where he has not provided for the payment or acceptance of the same, and the same be not paid upon presentation, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, at the discretion of the court. The giving of the aforesaid worthless check, draft, or order shall be prima facie evidence of an intent to cheat and defraud.

1907, c. 975; 1909, c. 647; C.S. 4283.)

SEC. 14-107. *Worthless Checks*.—It shall be unlawful for any person, firm or corporation, to draw, make, utter or issue and deliver to another, any check or draft on any bank or depository, for the payment of money or its equivalent, knowing at the time of the making, drawing, uttering, issuing and delivering such check or draft as aforesaid, that the maker or drawer thereof has not sufficient funds on deposit in or credit with such bank or depository with which to pay the same upon presentation.

Any person, firm or corporation violating any provision of this section shall be guilty of a misdemeanor. (If the amount due on such check is not over fifty dollars, the punishment shall not exceed a fine of fifty dollars or imprisonment or thirty days.)

The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or depository for the payment of any such check or draft. The part of this section in brackets shall only apply to

Pitt county, Robeson county, Iredell county, Martin county, Lee county, Rutherford county, Bladen county, Cumberland county, Mecklenburg county, Catawba county, Sampson county, Alleghany county, Lenoir county, Randolph county, Gaston county, Hoke county, Madison county, Burke county, Transylvania county, Rockingham county, Halifax county, Hertford county, Richmond county, Chatham county, Pamlico county, Wake county, Haywood county, Granville county, Davidson county, Anson county, Carteret county, Davie county, Forsyth county, Greene county, Jackson county, Henderson county, Stokes county, Onslow county, Macon county, Currituck county, Chowan county, Vance county, Edgecombe county, Northampton county, Stanly county, Cabarrus county, Mitchell county, Yancey county, Avery county, Alamance county, Franklin county, Yadkin county, Caldwell county, Gates county, Ashe county, Washington county, Nash county, Johnston county, Duplin county, Wayne county, Guilford county, Rowan county, Bertie county, Moore county, Harnett county, Columbus county, Watauga county, Lincoln county, Caswell county, Orange county, Buncombe county, Wilkes county, Hyde county, Swain county, Clay county, Graham county, Cherokee county, Scotland county, Union county, and Surry county.

(1925, c. 14; 1927, c. 62; 1929, c. 273, ss. 1, 2; 1931, cc. 63, 138; 1933, cc. 43, 64, 93, 170, 265, 362, 458; 1939, c. 346.)

(6) Cigarettes to Minors

SECTION 14-313. *Selling Cigarettes to Minors.*—If any person shall sell, give away or otherwise dispose of, directly or indirectly, cigarettes, or tobacco in the form of cigarettes, or cut tobacco in any form or shape which may be used or intended to be used as a substitute for cigarettes, to any minor under the age of seventeen years; or if any person shall aid, assist or abet any other person in selling such articles to such minor, he shall be guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment in the discretion of the court.

(Rev., s. 3804; 1891, c. 276; C.S. 4438.)

SEC. 14-314. *Aiding Minors in Procuring Cigarettes; Duty of Police Officers.*—If any person shall aid or assist any minor child under seventeen years old in obtaining the possession of cigarettes, or tobacco in any form used as a substitute therefor, by whatsoever name it may be called, he shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court.

It shall be the duty of every police officer, upon knowledge or information that any minor under the age of seventeen years is or has been smoking any cigarette, to inquire of any such minor the name of the person who sold or gave him such cigarette, or the substance from which it was made, or who aided and abetted in effecting such gift or sale. Upon receiving this information from any such minor, the officer shall forthwith cause a warrant to be issued for the person giving or selling, or aiding and abetting in the giving or selling of such cigarette or the substance out of which it was made, and have such person dealt with as the law directs. Any such minor who shall fail or refuse to give to any officer, upon inquiry, the name of the

person selling or giving him such cigarette, or the substance out of which it was made, shall be guilty of a misdemeanor.

(Rev., s. 3805; 1891, c. 276, s. 2; 1913, c. 185; C.S. 4439.)

(7) Sale of Candy and Similar Products Law

SECTION 66-17. *Sale, Etc., of Candy or Other Food Not Complying with Health and Pure Food Laws.*—It shall be unlawful for any person, firm or corporation, or agent of any person, firm or corporation, to consign, sell, possess or use any candy or other product within this state that does not comply with all federal and state health and pure food laws in force and effect in North Carolina.

(1939, c. 323, s. 1.)

SEC. 66-18. *Manufacturer to Pay Tax Upon Products Consigned to Person, Etc., Other Than Licensed Wholesale or Retail Merchant.*—Any manufacturer of candy or similar products, or the agent of such manufacturer, who consigns any such products to any person, firm or corporation other than a licensed wholesale or retail merchant in the state of North Carolina shall be liable for and pay to the state of North Carolina a tax of three per cent (3%) upon the gross retail sales price of merchandise so consigned and/or sold: *Provided* such manufacturers shall be entitled to a refund or credit for taxes paid on such consigned goods as are returned by the consignee to said manufacturer.

(1939, c. 323, s. 2.)

SEC. 66-19. *Regulations as to Possession and Sale.*—It shall be unlawful for any person, firm or corporation other than a licensed wholesale or retail merchant in the state of North Carolina to consign, possess or use any article upon which the tax provided for in section 66-18 preceding is payable, or for any consignee to sell such product, unless the manufacturer thereof is registered with the commissioner of revenue of the state of North Carolina for payment of said tax.

(1939, c. 323, s. 3.)

SEC. 66-20. *Commissioner of Revenue May Require Reports.*—The commissioner of revenue shall have authority to require a report, at such times as he may require, from every person, firm or corporation manufacturing candy or similar products, or from the agent of any such manufacturer, of the names and addresses of all consignors, other than licensed merchants, to whom consignment of such merchandise is made.

(1939, c. 323, s. 4.)

SEC. 66-21. *Violators Deprived of Legal Redress.*—The consignor shall not have the right to sue in any court of law in this state for the collection of monies resulting from the sale of merchandise sold in violation of this article.

(1939, c. 323, s. 5.)

SEC. 66-22. *Violations Made Misdemeanor.*—Any person convicted for the violation of this article shall be guilty of a misdemeanor and subject to a fine of not exceeding one hundred dollars (\$100.00) or imprisonment for

not exceeding thirty days or both fine and imprisonment in the discretion of the court.

(1939, c. 323, s. 6.)

(8) Jury Duty Exemption Service

SECTION 9-19. *Exemptions from Jury Duty.*—All practicing physicians, licensed druggists, telegraph operators who are in the regular employ of any telegraph company or railroad company, train dispatchers who have the actual handling of either freight or passenger trains, regularly licensed pilots, regular ministers of the gospel, officers or employees of a state hospital for the insane, active members of a fire company, funeral directors and embalmers, printers and linotype operators, all millers of grist mills, all United States railway postal clerks and rural free delivery mail carriers, locomotive engineers, brakemen and railroad conductors in active service, radio broadcast technicians, announcers, and optometrists, and all members of the national guard, naval militia, officers reserve corps, enlisted reserve corps, and the naval reserves, who comply with and perform all duties required of them as members of the national guard, naval militia, officers reserve corps, enlisted reserve corps, and naval reserves, shall be exempt from service as jurors. On the first day of January and July of each year, the commanding officer of each company, troop, battery, detachment, or division of the national guard, naval militia, officers reserve corps, enlisted reserve corps, and the naval reserves, of North Carolina, shall file with the clerk of the superior court of the county in which such company, troop, battery, detachment, or division is located a statement giving the name and rank of each member of his organization who has performed all military duties during the preceding six months; and any member of such military organization whose name does not appear upon such statement shall not receive the benefit of the exemption provided for herein during the six months immediately following the filing of the statement.

The board of county commissioners of any county in North Carolina may, in their discretion, exempt any ex-Confederate soldier in their county from jury duty who shall apply to them for exemption.

The clerk of the superior court of each county is hereby empowered to excuse from jury duty any person or persons exempt under the first sentence of this section prior to the convening of the term of court for which such person or persons are required to serve as jurors.

(Rev., s. 1880; Code, ss. 1723, 2269; 1885, c. 289; 1889, c. 255; 1897, c. 32; 1901, c. 118; 1909, cc. 333, 868; 1913, c. 38, s. 1; 1913, c. 103; 1915, cc. 217, 228, 260; 1917, c. 200, s. 89; 1931, c. 410; 1937, c. 151; 1937, c. 224, s. 2; 1943, c. 343, C.S. 2329, 6870.)

(9) State Board of Health—Pharmacist Member

SECTION 130-1. *Membership of Board.*—The North Carolina Board of Health shall consist of nine members, four of which members shall be elected by the Medical Society of the State of North Carolina and five of which members shall be appointed by the Governor. One of the members appointed

by the Governor shall be a licensed pharmacist, one a reputable dairyman and one a food processor or server.

(Rev., s. 4435; Code, s. 2875; 1879, c. 177, s. 1; 1885, c. 237, s. 1; 1893, c. 214, s. 1; 1911, c. 62, s. 1; 1931, c. 177, s. 1; C.S. 7048; 1945, c. 281; 1945, c. 1095.)

(10) County Board of Health—Pharmacist Member

SECTION 130-18. *County Board of Health; Organization: Terms of Members; Chairman.*—The chairman of the board of county commissioners, the mayor of the county town, and in county towns where there is no mayor the clerk of the superior court, and the county superintendent of schools shall meet together on the first Monday in April, one thousand nine hundred and thirty-one, and thereafter on the first Monday of January in the odd years of the calendar, and elect from the regularly registered physicians and dentists and pharmacists of the county two physicians and one dentist and one pharmacist, who, with themselves, shall constitute the county board of health. The chairman of the board of county commissioners shall be the chairman of the county board of health, and the presence of three members at any regular or called meeting shall constitute a quorum. The term of office of members of the county board of health shall terminate on the first Monday in January in the odd years of the calendar, and while on duty the county may at its discretion pay them four (\$4.00) dollars per diem, unless such board members are full time employees of the county or municipality located therein, in which event they shall receive no per diem compensation as member of the county board of health.

(Rev., s. 4444; 1901, c. 245, s. 3; 1911, c. 62, s. 9; 1931, c. 149; 1941, c. 185; C.S. 7064; 1945, c. 99.)

(11) County Board of Health—Organization

SECTION 130-18. *County Board of Health; Organization; Term of Members; Chairman.*—

1. All counties having a separate health department shall organize and operate a county board of health composed of three ex-officio members, the same being the chairman of the board of county commissioners, mayor of the city or town which is the county seat (if there is no such mayor, then the clerk of the superior court of the county), and the county superintendent of public instruction; these ex-officio members shall hold an annual election meeting the first week in January in each year for the purpose of electing or appointing public members; the public members shall be four in number, one of whom shall be a dentist, one a physician, one a registered pharmacist, and the other one shall be a public spirited citizen. Where either of the three specified public members, namely a physician, or a dentist, or a pharmacist, cannot be elected because there is no such person resident in the county, this place shall be filled with a public spirited citizen. The first meeting of the ex-officio members for the election or appointment of public members shall be in the first week in January, one thousand nine hundred and forty-six, and at this meeting one of the public members shall be elected or appointed for a period of four years, one for three years, one for two

years, and one for one year; thereafter one member shall be elected each year for a term of four years; in cases where more than one city or town participates by law in the financial support of the health department, the mayor of such participating city or town shall be an ex-officio member of the board of health; in any instance the ex-officio members shall elect the four public members as provided above; the board shall elect its own chairman, who shall not have the right to vote except in case of a tie; any four members of the board shall constitute a quorum and the county health officer shall act as secretary to such board of health; *provided*, that those counties which now have special city-county boards of health, as authorized by any private, local, or Public-Local Act of the General Assembly, for the purpose of carrying on a joint health program shall be exempted from the terms of this section, unless the special city-county board of health shall vote by a two-thirds majority of all members to dissolve said special board of health, and shall so notify the State Health Officer, in writing, in which event the provisions of this paragraph shall apply.

2. The rules, regulations and ordinances of the county board of health shall apply to municipalities within the county but the board of health shall not have the power to pass special ordinances covering a municipality only, such authority being implicit in and retained by the governing body of the municipality. The duties and the responsibilities of the county board of health shall be as set forth in Section one hundred and thirty - nineteen of the General Statutes of North Carolina except as may be modified by the provisions of this section.

(Rev., s. 4444; 1901, c. 245, s. 3; 1911, c. 62, s. 9; 1931, c. 149; 1941, c. 185; C.S. 7064; 1945, c. 99.)

SEC. 130-21. *To Elect County Physician and Health Officer.*—The county board of health shall elect a health officer meeting the qualifications set forth by the Merit System Council and subject to the provisions of Chapter one hundred and twenty-six of the General Statutes. The term of office of the county health officer shall be at the pleasure of the county board of health. Emergency and temporary appointments may be made when necessary with the approval of the State Health Officer. When, in the case of a vacancy, the county board of health fails to elect a health officer within sixty days after receiving notification from the State Health Officer that a vacancy exists, it shall be the duty of the State Health Officer to appoint a health officer for the county. The county health officer may also be the county physician. Election of a county physician in counties having a county board of health shall be by such board. Such election shall take place during January of the odd years of the calendar for a two-year term. The salary of the county physician shall be paid by the board of county commissioners at such time and in such sum or amount as may be mutually agreed upon between the board of county commissioners and the county physician. The members of the county board of health while on duty shall each receive a per diem of four dollars (\$4.00).

(Rev. 4444, 4446; 1897, c. 201, s. 1; 1901, c. 245, s. 3; 1911, c. 62, s. 9; 1913, c. 181, s. 1; 1915, cc. 214, 233; C.S. 7067; 1945, c. 1030.)

CHAPTER VIII

MISCELLANEOUS TAX LAWS

(1) Itinerant Vendor Tax Law

SECTION 105-53. *Peddlers*.—(a) Any person, firm, or corporation who or which shall carry from place to place any goods, wares, or merchandise, and offer to sell or barter the same, or actually sells or barter the same, shall be deemed a peddler, except such person, firm, or corporation who or which is a wholesale dealer, with an established warehouse in this State and selling only to merchants for resale, and shall apply for and procure from the Commissioner of Revenue a State license for the privilege of transacting such business, and shall pay for such license the following tax:

Peddler, on foot, for each county.....	\$10.00
Peddler with horse or other animal, and with or without vehicle, each county, for each vehicle.....	15.00
Peddler, with vehicle propelled by motor or other mechanical power, for each county, for each vehicle.....	25.00

(b) Any person, firm, or corporation employing the services of another as a peddler, either on a salary or commission basis, and/or furnishing spices, flavoring extracts, toilet articles, soaps, insecticide, proprietary medicine and household remedies in original packages of the manufacturer and other packaged articles of the kind commonly used on the farm and in the home, to be sold by a peddler, under any kind of contractual agreement, shall be liable for the amount of taxes levied in this section, instead of the peddler.

Provided, however, any person peddling fruits, vegetables, or products of the farm shall pay a license tax of twenty-five dollars (\$25.00) per year, which license shall be State-wide. Counties, cities and towns may levy a tax under this subsection not in excess of one-half of the State tax. *Provided, however,* no county, city or town shall issue any license, or permit any person, firm, or corporation to do any business under the provisions of this subsection, until and unless such person shall produce and exhibit to the tax collector of such county, city or town, his or its State license for the privilege of engaging in such business.

(c) Any person, firm, or corporation who or which sells or offers to sell from a cart, truck, automobile, or other vehicle operated over and upon the streets and/or highways within this State any fresh fruits and/or vegetables shall be deemed a peddler within the meaning of this section and shall pay the annual license tax levied in Subsection (a) of this Act with reference to the character of the vehicle employed. Any person, firm, or corporation who or which sells or offers for sale from any railway car fresh fruits and/or vegetables shall be deemed a peddler within the meaning of this section, and shall pay an annual tax of twenty-five dollars (\$25.00). Nothing in this section shall apply to the sale of farm products raised on the premises owned or occupied by the person, firm, or corporation, his or its bona fide agent or employee selling same.

(d) Every itinerant salesman or merchant who shall expose for sale, either on the street or in a building occupied, in whole or in part, for that purpose, any goods, wares or merchandise, not being a regular merchant in such county, shall apply for in advance and procure a State license from the Commissioner of Revenue for the privilege of transacting such business, and shall pay for such license a tax of one hundred dollars (\$100.00) in each county in which he shall conduct or carry on such business.

Any salesman or merchant, offering for sale goods, wares or merchandise, other than fruits and farm products, shall be deemed an itinerant, within the meaning of this subsection, who conducts said business within the county for less than six consecutive months, except in case of discontinuance for one of the reasons hereinafter mentioned. When any salesman or merchant, beginning said business, does not pay the tax herein levied in advance, on the ground of stated intention to become a regular merchant, the Commissioner of Revenue may, in his discretion, require said salesman or merchant to post satisfactory bond, or make a cash deposit, in the sum of one hundred dollars (\$100.00), which bond or deposit shall be forfeited in payment of the tax herein levied in case such salesman or merchant discontinues said business in the county within less than six months, for any reason other than death or disablement of said salesman or merchant, or insolvency of said business, or destruction of the stock by fire or other catastrophe. In like manner the tax collector of any county or city levying a tax, as permitted by subsection (g), on the business taxed in this subsection, may, in his discretion, require posting of satisfactory bond or cash deposit in an amount equivalent to the tax so levied by said county or city; and said bond or deposit shall in like manner be subject to forfeiture in payment of said tax. Any salesman or merchant failing to post such bond or make such deposit within three days after being notified to do so by the commissioner or collector, shall immediately become liable for the taxes levied or authorized to be levied on the business taxed in this subsection. When any salesman or merchant, having been required to post such bond or deposit, has conducted said business for six consecutive months, or has discontinued said business within six months for one of the reasons specifically mentioned herein, he shall be entitled to have said bond canceled or said deposit returned.

(e) The provisions of this section shall not apply to any person, firm, or corporation who sells or offers for sale books, periodicals, printed music, ice, wood for fuel, fish, beef, mutton, pork, bread, cakes, pies, products of the dairy, poultry, eggs, livestock, or articles produced by the individual vendor offering them for sale, but shall apply to medicines, drugs, or articles assembled.

(f) The Board of County Commissioners of any county in this State, upon proper application, may exempt from the annual license tax levied in this section Confederate soldiers, disabled veterans of the Spanish-American War, disabled soldiers of the first and second World Wars, who have been bona fide residents of this State for twelve or more months continuously, and the blind who have been bona fide residents of this State for twelve or more months continuously, widows with dependent children; and when so exempted, the Board of County Commissioners shall furnish such person or

persons with a certificate of exemption, and such certificate shall entitle the holder thereof to peddle within the limits of such county without payment of any license tax to the State.

(g) Counties, cities, or towns may levy a license tax on the business taxed under this section not in excess of the annual license levied by the State. But the Board of County Commissioners of any county may levy a license tax on the business taxed in this section not in excess of that levied by the State for each unincorporated town or village in the county with a population of one thousand or more within a radius of one mile in which such business is engaged in; and any county or city may levy on peddlers of goods, wares, or merchandise with vehicle propelled by motor or other mechanical power, taxed by the State under Subsection (a) of this section, a tax not exceeding two hundred dollars (\$200.00) for each vehicle, which said tax may, in the discretion of the governing body, be graduated in accordance with the size or weight of said vehicles, the amount of merchandising space in and on said vehicles, the average value of goods carried, the types of products offered for sale, or any other reasonable principle, except that the tax levied hereunder on account of a vehicle of one-half ton capacity or less shall not exceed twenty-five dollars (\$25.00).

No county, city, or town shall levy any license tax under this section upon the persons so exempted in this section, nor upon drummers selling by wholesale: *Provided*, the Public-Local Laws relating to any county or city in this State in conflict with this section are hereby repealed.

(1941, c. 50, s. 3(f); 1943, c. 400, s. 2(g); 1945, c. 708, s. 2(c), (d), (e).)

(2) Restaurant Operators Tax Law

SECTION 105-62. *Restaurants*.—Every person, firm, or corporation engaged in the business of operating a restaurant, cafe, cafeteria, hotel, with dining service on the European plan, drug store, or other place where prepared food is sold, shall apply for and procure from the Commissioner of Revenue a State license for the privilege of transacting such business. The tax for such license shall be based on the number of persons provided with chairs, stools, or benches, and shall be one dollar (\$1.00) per person, with a minimum tax of five dollars (\$5.00): *Provided*, that the tax levied in this paragraph shall not apply to industrial plants maintaining a non-profit restaurant, cafe or cafeteria solely for the convenience of its employees.

(a) All other stands or places where prepared food is sold as a business, and drug stores, service stations, and all other stands or places where prepared sandwiches only are served, shall pay a tax of five dollars (\$5.00).

(b) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-half of the base tax levied by the State.

(1939, c. 158, s. 127.)

(3) Music Machine Tax Law

SECTION 105-65. *Music Machines*.—

(1) Every person, firm, or corporation engaged in the business of operating, maintaining, or placing on location anywhere within the State of

North Carolina, any machine or machines which plays records, or produces music, shall apply for and procure from the Commissioner of Revenue a state-wide license to be known as an annual operator's license, and shall pay for such license the sum of one hundred (\$100.00) dollars.

(2) In addition to the above operator's license, every person, firm, or corporation operating any of the above machines, shall apply for and obtain from the Commissioner of Revenue, what shall be termed an annual statewide license for each machine operated and shall pay therefor the sum of ten (\$10.00) dollars.

(3) The applicant for license under this section shall, in making application for license, specify the serial number of the machine or machines proposed to be operated, together with a description of the service offered for sale thereby, and the amount of deposit required by or in connection with the operation of such machine or machines. The license shall carry the serial number to correspond with that on the application, and no such license shall under any condition be transferable to any other machines. It shall be the duty of the person in whose place of business the machine is operated or located to see that the proper State license is attached in a conspicuous place on the machine before its operation shall commence.

(4) If any person, firm, or corporation shall fail, neglect or refuse to comply with the terms and provisions of this section, or shall fail to attach the proper State license to any machine as herein provided, the Commissioner of Revenue, or his agents, or deputies, shall forthwith seize and remove such machine, and shall hold the same until the provisions of this section have been complied with. In addition to the above provision the applicant shall be further liable for the additional tax imposed under Section one hundred and ninety (190) of this Act.

(5) Counties, cities and towns may levy and collect a license tax not in excess of fifty percent (50%) of the total amount collected by the State from music machines: *Provided*, that counties, cities and towns shall not levy and collect an annual operator's occupational license levied for the operation of the above machines.

(6) Counties, cities and towns levying a tax under the provisions of this section shall have power through their tax collecting officers, upon nonpayment of the tax levied by them, or of any interest or penalty thereon, or upon failure to attach the evidence of license issued by them to any such machines, to seize, remove and hold such machines until all such defaults have been remedied.

(1941, c. 50, s. 3, (h); 1943, c. 400, s. 2, (1); 1943, c. 105; 1945, c. 708, s. 2, (g).)

(4) Merchandising Dispensers and Weighing Machine Tax Law

SECTION 105-65.1. *Merchandising Dispensers and Weighing Machines—*

(1) Every person, firm or corporation engaged in the business of operating, maintaining or placing on location anywhere within the State of North Carolina any merchandising dispenser, in which is kept any article or merchandise to be purchased, or any weighing machine shall apply for and procure from the Commissioner of Revenue a statewide license to be known as

an annual distributor's or operator's license, and shall pay for such license the following tax:

Distributors or Operators of Cigarette Dispensers or Dispensers of other Tobacco Products	\$100.00
Distributors or Operators of Drink Dispensers	100.00
Distributors or Operators of Food or Other Merchandising Dispensers	25.00
Distributors or Operators of Weighing Machines	25.00

(2) In addition to the above annual distributor's or operator's license, every person, firm or corporation distributing or operating any of the above dispensers or machines shall apply for and obtain from the Commissioner of Revenue what shall be termed a state-wide license for each dispenser or machine operated, and shall pay therefor the following annual tax:

Cigarette Dispensers or Dispensers of other Tobacco Products.....	\$ 5.00
Drink Dispensers	15.00
One Cent Food or Merchandising Dispensers	.50
Five Cent Food or Merchandising Dispensers	1.00
Weighing Machines	2.50

Provided, that the above tax on food or merchandising dispensers shall not apply to dispensers that vend solely peanuts, neither shall the tax apply to dispensers that vend no other commodity than candy containing fifty per cent (50%) or more peanuts, nor to penny self-service dispensers or machines contributing twenty per cent (20%) of their gross revenue to work for the visually handicapped. The applicant for license under this section shall, in making application for license, specify the serial number of the dispenser, or dispensers, and of the weighing machine, or machines, proposed to be distributed or operated, together with a description of the merchandise or service offered for sale thereby, and the amount of deposit required by on in connection with the operation of such dispenser, or dispensers, and such machine, or machines. The license shall carry the serial number to correspond with that on the application, and no such license shall under any condition be transferable to any other dispensers or machines. It shall be the duty of the person in whose place of business the dispenser or machine is operated or located to see that the proper State license is attached in a conspicuous place on the dispenser or machine before its operation shall commence. *Provided*, that when application is made under this section for license to operate a machine dispensing bottled drinks or cigarettes, the applicant for such license shall pay or cause to be paid the license fee provided for under sections 144 and 149 of this article, as the case may be.

(3) If any person, firm, or corporation shall fail, neglect or refuse to comply with the terms and provisions of this section or shall fail to attach the proper State license to any dispenser or machine as herein provided, the Commissioner of Revenue, or his agents or deputies, shall forthwith seize and remove such dispenser or machine, and shall hold the same until the provisions of this section have been complied with. In addition to the above provision the applicant shall be further liable for the additional tax imposed under section one hundred and ninety (190) of this act.

(4) Sales of merchandise herein referred to shall be subject to the provisions of Article V, Schedule "E," of this Act, and the tax therein levied

shall be paid by the distributor or operator of such dispensers or machines.

(5) Counties, cities and towns may levy and collect a license tax not in excess of fifty per-cent (50%) of the total amount collected by the State from weighing machines: *Provided*, that counties, cities and towns shall not levy and collect an annual distributor's or operator's occupational license levied for the distribution or operation of the above named dispensers and machines, neither shall any county, city or town levy and collect any tax whatsoever from distributors and operators of soft drink dispensers and one cent and five cent food dispensers: *Provided, further*, that counties, cities and towns shall not levy and collect any per dispenser or machine license tax from distributors or operators of cigarette dispensers, or dispensers of other tobacco products. Counties, cities and towns may levy and collect an annual distributor's or operator's occupational license on cigarette dispensers not in excess of ten (\$10.00) dollars.

(6) Counties, cities and towns levying a tax under the provisions of this section shall have power through their tax collecting officers, upon non-payment of the tax levied by them, or of any interest or penalty thereon, or upon failure to attach the evidence of license issued by them to any such dispensers or machines, to seize, remove and hold such dispensers or machines until all such defaults have been remedied.

(7) The word "dispenser" or "dispensers" as used in this section shall include any machine or mechanical device through the medium of which any of the merchandise referred to in this section is purchased, distributed or sold.

(1945, c. 708, s. 2 (h).)

(5) Soda Fountains, Soft Drink Stands Tax Law

SECTION 105-79. *Soda Fountains, Soft Drink Stands.*—Every person, firm, or corporation engaged in the business of operating a soda fountain or soft drink stand shall apply for and obtain from the Commissioner of Revenue a State license for the privilege of conducting such business, and shall pay for such license the following tax:

(a) On soda fountains.

On each carbonated draft arm of each soda fountain, a tax of ten dollars (\$10.00).

On each stand at which soft drinks are sold, the same not being strictly a soda fountain, and on each place of business where bottled carbonated drinks are sold at retail, the license tax shall be five dollars (\$5.00).

In addition to the license tax levied in this section, the tax shall be paid upon the gross sales at the rate of tax levied in Article V Schedule E, of this Act, upon the retail sales of merchandise, such tax to be paid at the time and in the manner required for the sales of other merchandise.

Counties shall not levy a license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-half of the base tax levied by the State.

(1939, c. 158, s. 144.)

NOTE: The taxes levied in this section by the state are reduced 50% for the years beginning June 1, 1943, and ending May 31, 1947. See Section 192.

(6) Tobacco and Cigarette Retailers and Jobbers Tax Law

SECTION 105-84. *Tobacco and Cigarette Retailers and Jobbers.*—Every person, firm, or corporation engaged in the business of retailing and/or jobbing cigarettes, cigars, chewing tobacco, snuff, or any other tobacco products shall apply for and obtain from the Commissioner of Revenue a State license for the privilege of engaging in such business, and shall pay for such license the following tax:

Outside of incorporated cities or towns and cities or towns of
less than 1,000 population \$ 5.00

Cities or towns of 1,000 population and over 10.00

Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of that levied by the State.

(1939, c. 158, s. 149.)

(7) Manufacturers of Ice Cream Tax Law

SECTION 105-97. *Manufacture of Ice Cream.*—

(a) Every person, firm, or corporation engaged in the business of manufacturing or distributing ice cream at wholesale shall apply for and obtain from the Commissioner of Revenue a state license for the privilege of doing business in this State and shall pay for each factory or place where manufactured and/or stored for distribution the following base tax: Where the machine or the equipment unit used is of the continuous freezer type the rate of tax shall be one dollar and fifty cents (\$1.50) per gallon capacity based on the rated capacity in gallons per hour according to manufacturer's rating of such freezer or freezers, but in no case shall the tax be less than ten dollars (\$10.00) per annum for any freezer or freezers used; and where the machine or equipment unit used is not of the continuous freezer type the rate of tax shall be five (\$5.00) dollars per gallon capacity for the freezer or freezers used; but in no case shall the tax be less than ten dollars (\$10.00) per annum for any freezer or freezers used; *provided* that the Commissioner shall have the right to check the correctness or accuracy of any such manufacturer's rating herein referred to and to levy the tax herein authorized on the basis of such determined capacity; and *provided, further* that where no standard freezer equipment with manufacturer's capacity rating is used, a tax of fifty dollars (\$50.00) shall apply; and *provided, further* that the license tax herein shall not apply to any farmer who manufactures and sells only the products of his own cows.

Each truck, automobile or other vehicle coming into this state from another state and selling and/or delivering ice cream on which the tax has not been paid under the provisions of this section shall pay an annual license tax for the privilege of doing business in this state in the sum of one hundred dollars (\$100.00) per truck, automobile or vehicle. The license secured from the state under this section shall be posted in the cab of the truck, automobile or other vehicle.

(b) For the purpose of this section the words "ice cream" shall apply to ice cream, frozen custards, sherbets, water ices, and/or similar frozen products.

(c) Every retail dealer selling at retail ice cream purchased from a manufacturer other than a manufacturer who has paid the tax imposed in subsection (a) of this section or a manufacturer using counter freezer equipment and selling ice cream at retail only shall pay an annual license tax for the privilege of doing business in this State of ten dollars (\$10.00).

(d) Counties shall not levy a license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one-fourth of the above.

(1945, c. 708, s. 2, (m), (n).)

NOTE: The taxes levied in this section by the state are reduced 50% for the years beginning June 1, 1943, and ending May 31, 1947. See Section 192.

(8) Branch or Chain Stores Tax Law

SECTION 105-98. *Branch or Chain Stores.*—Every person, firm, or corporation engaged in the business of operating or maintaining in this State, under the same general management, supervision, or ownership, two or more stores, or mercantile establishments where goods, wares, and/or merchandise is sold or offered for sale, or from which such goods, wares, and/or merchandise are sold and/or distributed at wholesale or retail, or controls by lease, either as lessor or lessee, or by contract, the manner in which any such store or stores are operated, or the kinds, character, or brands of merchandise which are sold therein, shall be deemed a branch or chain store operator, and shall apply for and obtain from the Commissioner of Revenue a State license for the privilege of engaging in such business of a branch or chain store operator, and shall pay for such license a tax according to the following schedule:

On each and every such store operated in this State in excess of one—

For not more than four additional stores, for each such additional store	\$ 65.00
For five additional stores and not more than eight, for each such additional store	85.00
For nine additional stores and not more than twelve, for each such additional store	95.00
For thirteen additional stores and not more than sixteen, for each such additional store	105.00
For seventeen additional stores and not more than twenty, for each such additional store	115.00
For twenty-one additional stores and not more than thirty, for each such additional store	140.00
For thirty-one additional stores and not more than fifty, for each such additional store	175.00
For fifty-one additional stores and not more than one hundred, for each such additional store	200.00
For one hundred and one additional stores and not more than two hundred, for each such additional store	225.00
For two hundred and one additional stores and over, for each such additional store	250.00

The term "chain store" as used in this section shall include stores operated under separate charters of incorporation, if there is common ownership of a majority of stock in such separately incorporated companies, and/or if there is similarity of name of such separately incorporated companies, and/or if such separately incorporated companies have the benefit in whole or in part of group purchase of merchandise, or of common management. And in like manner the term "chain store" shall apply to any group of stores where a majority interest is owned by an individual or partnership.

Counties shall not levy a license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of fifty dollars (\$50.00) for each chain store located in such city or town. For the purpose of ascertaining the particular unit in each chain of stores not subject to taxation by the State under this section, and therefore not liable for city license tax, the particular store in which the principal office of the chain in this State is located shall be designated as the unit in the chain not subject to this tax.

In enforcing the provisions of this section, the Commissioner of Revenue may prorate the total amount of tax for chain to the several units and the amount so prorated may be recovered from each unit in the chain in the same way as other taxes levied in this Act.

This section shall not apply to retail or wholesale dealers in motor vehicles and automotive equipment and supply dealers at wholesale who are not liable for tax hereunder on account of the sale of other merchandise.

(1939, c. 158, s. 162; 1945, c. 708, s. 2, (o).)

(9) Reduction of License Taxes Due to War Conditions

SECTION 105-113.1. *Reduction of Certain License Taxes Due to War Conditions.*—The license taxes levied under this article upon the business of selling particular kinds of merchandise or commodities are levied for the privilege of engaging in the business of selling such articles, merchandise or commodities in the normal course of business.

The taxes are required to be paid in advance at the beginning of the tax year with no provision for refund for any cause with possible exception of the indirect method prescribed by the 1943 Amendment to the Revenue Act providing for the transfer of such license under certain conditions.

War conditions have affected business licenses levied under Schedule B more than any other taxes levied by the State.

Under war conditions priorities, rationing, and restrictions upon the sale of particular articles of merchandise have so restricted business opportunities in many lines as to make the application of the license taxes now levied wholly unreasonable, and relief must be granted to those business which have suffered severely, and provisions must be made to provide relief for those businesses which will suffer severely before the convening of the next General Assembly; therefore, Schedule B license privilege taxes levied by the State under this article are reduced as follows:

- (a) The taxes levied by the State under Section 117 are reduced 50%.
- (b) The taxes levied by the State under Section 119 are reduced 50%.
- (c) The taxes levied by the State under Section 126½ are reduced 50%.

- (d) The taxes levied by the State under Section 132 are reduced 50%.
- (e) The taxes levied by the State under Section 144 are reduced 50%.
- (f) The taxes levied by the State under Section 147 are reduced 50%.
- (g) The taxes levied by the State under Section 153 are reduced 75%.
- (h) The taxes levied by the State under Section 161 are reduced 30%.
- (i) The taxes levied by the State under Section 162½ are reduced 75%.
- (j) The taxes levied by the State under Section 151 are reduced 50%.

The reductions in taxes herein authorized shall not be applicable to counties, cities and towns. It is the intent of this section that counties, cities, and towns may continue to levy privilege taxes within the same limits authorized by the Revenue Act of 1939, as amended, prior to the enactment of this section.

This section shall be in full force and effect from and after its ratification, but the reductions in license taxes authorized herein shall be effective only from and after June 1, 1943.

This section shall be in effect until June 1, 1947. (1943, c. 400, s. 2(t); 1945, c. 708, s. 2(p).)

(10) Seed Dealers Tax Law

SECTION 106-284.3. *Funds for Expenses; Licensing; Inspection Stamps.*—For the purpose of providing a fund to defray the expenses of the inspection, examination, analysis of seeds, and enforcement of the provisions of this article:

a. Each seed dealer selling, offering, or exposing for sale in, or exporting from, this State, any agricultural or vegetable seed for seeding purposes, shall purchase from the commissioner for one cent each, official North Carolina seed analysis tags and shall attach a tag to each container of seed weighing ten (10) pounds or more.

b. Each seed dealer, selling, offering, or exposing for sale in, or exporting from, this State, any agricultural or vegetable seeds, other than packet or package seeds, for seeding purposes, shall register with the commissioner his name and shall obtain a license annually on January first of each year, and shall pay for such license as follows:

(1) Twenty-five dollars (\$25.00), if a wholesaler, or a wholesaler and retailer.

(2) Ten dollars (\$10.00), if a retailer with sales in excess of one hundred dollars (\$100.00), for the calendar year. Each branch of any wholesaler or retailer shall be required to obtain a retail license.

(3) One dollar (\$1.00), if a retailer at a permanent location with sales not in excess of one hundred dollars (\$100.00): *Provided*, that if and when the seed sales for the calendar year shall exceed one hundred dollars (\$100.00), application must be made for a ten-dollar (\$10.00) license, credit to be given for the one dollar (\$1.00) license previously secured.

c. A one dollar (\$1.00) inspection stamp shall be purchased from the commissioner for each seventy-two (72) dozen packets or packages of vegetable or flower seeds, or fraction thereof. The said stamp shall be secured by the producer, grower, jobber, or other person, firm or corporation shipping such seed into the State before shipment to agent or retailer,

and shall be furnished to said agent or retailer for attachment to display case: *Provided, also*, that any producer, grower, jobber or other person, firm, or corporation, residing within this State shall secure said stamp before furnishing any such seed to any agent or retailer within the State for resale. The said agent or retailer is made responsible for obtaining said stamp which shall be attached to the display case before the seed are offered or exposed for sale, and shall expire at the end of the calendar year for which issued: *Provided further*, that in cases where package seed of one kind or variety are offered or exposed for sale in boxes or display cases not in excess of six (6) dozen packages, a ten-cent stamp shall be purchased from the commissioner and attached to said box or display case.

d. No owner or operator of any harvester or threshing machine operating on a share basis and selling only the seed obtained in this manner shall come under the provisions of section one hundred and sixty-two hundred and eighty-four point three.

(1941, c. 114, s. 81; 1945, c. 828.)

(11) Stock and Poultry Tonics Tax Law

SECTION 106-112. *Application and Affidavit for Registration.*—Before any condimental, patented, proprietary or trade-marked “stock or poultry tonic,” “regulator,” “conditioner,” or “vermicide” or any similar preparation, regardless of the specific name or title under which it is sold, which is represented as containing “tonic,” “remedial” or other “medicinal” properties for domestic animals or poultry, either is sold or offered for sale in this state, by sample or otherwise, the manufacturer, importer, dealer, agent, or person who causes it to be sold or offered for sale shall file with the commissioner of agriculture an application for registration on a form to be furnished by said commissioner, the execution of which shall be sworn to before a notary public or other proper official for registration, stating the name of the manufacturer, the location of the principal office of the manufacturer, the name, brand, or trade-mark under which said preparation or preparations will be sold, and a statement of the ingredients of said preparation, together with a labeled package of said preparation showing claims made for same, which labeling shall not be changed during the year for which the registration is made without the consent of the commissioner of agriculture. The commissioner of agriculture shall decline to register a preparation that is injurious to the health of domestic animals or poultry, or that conflicts with the requirements of the North Carolina Food, Drug, and Cosmetic Law, or that the name, trade-mark, or label under which the preparation is sold may mislead or deceive the purchaser in any way, or that any statements, designs, or devices on the label or package regarding the substances contained therein are not true and correct, or that any claims made for the feeding, condimental, tonic, or medicinal value are false or misleading in any particular.

(1909, c. 556, s. 1; 1943, c. 226, s. 1; C.S. 4742.)

SEC. 106-113. *Registration Fee.*—For the expense incurred in registering, inspecting, and analyzing “stock or poultry tonics,” “regulators,” “conditioners,” “vermicides,” and similar preparations defined in section 106-112,

a registration fee of twenty dollars for each separate brand shall be paid by the manufacturers or sellers of same to the commissioner of agriculture during the month of January in each year, said fees to be used by the commissioner of agriculture for executing the provisions of this article.

(1909, c. 556, s. 2; 1943, c. 226, s. 2; C.S. 4743.)

SEC. 106-114. *Sale of Unregistered Tonics a Misdemeanor.*—Any person, company, corporation, or agent that shall offer for sale or expose for sale any package or sample or any quantity of any condimental, patented, proprietary, or trade-marked "stock or poultry tonic," "regulator," "conditioner," "vermicide," or any similar preparation, regardless of the title under which it is sold, which has not been registered as required by section 106-112, or which may have been registered, but subsequently found by an analysis or examination made by or under the direction of the commissioner of agriculture to violate any of the provisions of this article, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of fifty dollars (\$50.00) for the first offense and in the sum of one hundred dollars (\$100.00) for each subsequent offense.

(1909, c. 556, s. 3; 1943, c. 226, s. 3; C.S. 4744.)

SEC. 106-115. *Notice of Violation Charged; Hearing Before Commissioner.*—Whenever the commissioner of agriculture becomes cognizant of any violation of any of the provisions of this act he shall immediately notify, in writing, the manufacturer, importer, jobber, or dealer, if same be known. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed by the commissioner and board of agriculture.

(1909, c. 556, s. 4; C.S. 4745.)

SEC. 106-116. *Issuance of "Stop Sale" Orders by Commissioners; Confiscation or Sale of Products.*—If it appears that any of the provisions of this article have been violated, the commissioner of agriculture or his authorized representative is hereby authorized to issue a "stop sale" order which shall prohibit further sale of any product offered in violation of this article until the law has been complied with or said violation has otherwise been legally disposed of. The commissioner of agriculture or his authorized representative is further authorized to confiscate and seize any product sold or offered for sale in violation of this article and shall have the authority to sell said product if it can be made to conform to this article or to destroy same if it cannot be made to conform with this article. Such sale shall be made at the courthouse door in the county in which the seizure is made, after 30 days advertisement in some newspaper published in such county, or if no newspaper is published in such county, then by like advertisement in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the name of the product, the quantity, why seized and offered for sale. The proceeds from such sale, after deducting the necessary expense of said sale, shall be deposited with the state treasurer for the use of the department of agriculture.

(1909, c. 556, s. 4; 1941, c. 199, s. 1; C.S. 4746.)

SEC. 106-117. *Prosecution of Violations.*—If any person, firm or corporation shall violate any provision of this article, it shall be the duty of the commissioner of agriculture or his authorized representative to cause proceedings to be commenced and prosecuted in a court or competent jurisdiction in the district where the violation occurred.

(1909, c. 556, s. 5; 1941, c. 199, s. 2; C.S. 4747.)

SEC. 106-118. *Certificate of Analyst as Evidence.*—In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified.

(1909, c. 556, s. 4; C.S. 4748.)

SEC. 106-119. *Purpose of Article.*—This article does not repeal any part of any concentrated commercial feeding-stuff law which may be in effect in this state, but is designed to fully cover all preparations commonly known as condimental, patented, proprietary, or trade-marked "stock or poultry tonics," "regulators," "conditioners," "vermicides," and all similar preparations used for "tonic," "regulative," or "condition" purposes, and to protect the public from deception and fraud in the sale of these specific products.

(1909, c. 556, s. 6; 1943, c. 226, s. 4; C.S. 4749.)

CHAPTER IX

SALES AND USE TAX REGULATION NO. 8

Effective July 23, 1945

Subject: Sales of Medicines and Medical Supplies

This regulation is promulgated by the Commissioner of Revenue of North Carolina pursuant to authority granted in Section 423, 809, and 931 of the Revenue Act of 1939, as amended.

Sales of medicines and medical supplies are taxable at three per cent under the terms of the North Carolina Sales Tax Law, except as provided in Section 406 (k) of the Revenue Act as amended by the General Assembly of 1945, which reads as follows (The 1945 Amendment is underscored.):

Section 406 (k)—“Sales of medicines sold on prescriptions of physicians, or medicines compounded, processed or blended by the druggist offering the same for sale at retail, *or sales of drugs or medical supplies to physicians or hospitals or by physicians and hospitals to patients in connection with medical treatments.*”

As originally enacted, Section 406 (k) exempts (1) medicines sold on a physician's prescription, and refills of those prescriptions, and (2) medicines compounded, processed or blended by a druggist and then sold by the same druggist without a doctor's prescription. These exemptions of long standing are not in the least changed by the amended portion of Section 406 (k).

The purpose of the new or amended portion of Section 406 (k) is clearly two-fold: (1) To exempt sales of drugs, medicines and medical supplies to physicians and hospitals, and (2) to exempt sales of drugs, medicines and medical supplies when such sales are made by hospitals and by physicians to their patients in connection with medical treatment.

Of course, if a physician were to sell medicines or medical supplies to the general trade not on prescription and not in connection with the treatment of his patients, such sales would be taxable at three per cent and it would be the duty of the physician to register with the department as a retail merchant under Section 405 of the Revenue Act and to pay the tax accordingly. Also, if a hospital were to sell medicines or medical supplies to the general trade and not in connection with the treatment of its patients, such sales would be taxable at three per cent and such hospital would be liable for the tax and must register under Section 405 of the Revenue Act.

While the exemptions pointed out above are clear purposes of the law, added below are some appropriate explanations.

1. The terms “medicines” and “drugs” shall mean all medicines in the generally accepted sense of the term. Also included as medicines shall be tonics for internal use, vitamins, ointments, liniments, antiseptics, anaesthetics, serums, and other remedies having preventive and curative properties in medical treatment.

2. "Medical supplies" shall mean such items as cotton, gauze, adhesive tape, bandages and other dressings. Other items, also, such as knives, needles, and scissors, as well as larger articles shall be considered medical supplies. Examples of larger articles referred to are microscopes, x-ray machines and other laboratory apparatus used for testing and diagnosis, and for the prevention, treatment and cure of disease.

3. Proprietary or so-called patent medicines are subject to the three per cent tax when sold to general trade without a prescription.

4. All refills of physicians' prescriptions are exempt without an additional prescription.

5. When medicines as defined above are sold to the general trade under either of the following conditions, the three per cent tax applies:

(a) Either without a physician's prescription or not as a refill.

(b) When not compounded, processed or blended by the same druggist who makes the sale; this includes any medicines bought by a druggist, and then bottled or packaged and sold under the druggist's own name and label.

6. When medical supplies, as defined above, are sold to the general trade, they are subject to the three per cent tax.

Records of Exempt Sales

1. MEDICINES

Vendors making sales of physicians' prescriptions must keep sales records which will clearly segregate such sales. All original prescriptions must be carefully filed and kept conveniently available for inspection by a representative of the Department of Revenue.

When sales are made of refills of prescriptions, the sales record on refills must carry the numbers of their original prescription so that reference to the original can be easily made.

Vendors making sales of medicines to doctors and hospitals must, at all times, be able to show a record of such sales separate and apart from sales to all other purchasers of medicines.

2. MEDICAL SUPPLIES

Since sales of medical supplies by drug stores are exempt from the three per cent tax only when sold to doctors and hospitals, drug stores or other vendors of this merchandise must keep sales records similar to those required for exempt sales of medicines.

CHAPTER X

LAWS AND REGULATIONS GOVERNING SALE OF FOOD

(1) Sanitation of Establishments Providing Food and Lodging

SECTION 72-46. *State Board of Health to Regulate Sanitary Conditions of Hotels, Cafes, etc.*—For the better protection of the public health, the state board of health is hereby authorized, empowered, and directed to prepare and enforce rules and regulations governing the sanitation of hotels, cafes, restaurants, tourist homes, tourist camps, summer camps, lunch and drink stands, sandwich manufacturing establishments, and all other establishments where food is prepared, handled, and served to the public at wholesale or retail for pay, or where transient guests are served food or provided with lodging for pay. The state board of health is also authorized, empowered, and directed to prepare a system of grading all places, and no such establishment shall operate which receives a grade less than C.

(1941, c. 309, s. 1.)

SEC. 72-47. *Inspections; Report and Grade Card.*—The officers, sanitarians or agents of the state board of health are hereby empowered and authorized to enter any hotel, cafe, restaurant, tourist home, tourist camp, summer camp, lunch and drink stand, sandwich manufacturing establishment, and all other establishments where food is prepared, handled or served to the public at wholesale or retail for pay, or where transient guests are served food or provided lodging for pay, for the purpose of making inspections, and it is hereby made the duty of every person responsible for the management or control of such hotel, cafe, restaurant, tourist home, tourist camp, summer camp, lunch and drink stand, sandwich manufacturing establishment, or other establishment to afford free access to every part of such establishment, and to render all aid and assistance necessary to enable the sanitarians or agents of the state board of health to make a full, thorough, and complete examination thereof, but the privacy of no person shall be violated without his or her consent. It shall be the duty of the sanitarian or agent of the state board of health to leave with the management, or person in charge at the time of the inspection, a copy of his inspection report and a grade card showing the grade of such place, and it shall be the duty of the management, or person in charge, to post said card in a conspicuous place where it may be readily observed by the public. Such grade card shall not be removed by anyone, except an authorized sanitarian or agent of the state board of health, or upon his instruction.

(1941, c. 309, s. 2.)

SEC. 72-48. *Violation of Article a Misdemeanor.*—Any owner, manager, agent, or person in charge of a hotel, cafe, restaurant, tourist home, tourist camp, summer camp, lunch and drink stand, sandwich manufacturing establishment, or any other establishment where food is prepared, handled, or served to the public at wholesale or retail for pay, or where transient guests

are served food or provided with lodging for pay, or any other person who shall willfully obstruct, hinder, or interfere with a sanitarian, agent, or officer of the state board of health in the proper discharge of his duty, or who shall be found guilty of a misdemeanor, and upon conviction shall be fined not less than ten (\$10.00) dollars, nor more than fifty (\$50.00) dollars, or imprisoned for not more than thirty days, and each day that he shall fail to comply with this article, or operate a place with a rating of less than a grade of C shall be a separate offense.

(1941, c. 309, s. 3.)

(2) Rules and Regulations Governing Restaurants, etc.

Rules and regulations defining restaurant, itinerant restaurant, employee health officer, etc., requiring permits for the operation of such establishments, regulating the inspection, grading, and placarding of such establishments, and the enforcement and interpretation of these rules and regulations.

Adopted May 21, 1941

SECTION 1. Definitions.—The following definitions shall apply in the interpretation and enforcement of these rules and regulations:

a. *Restaurant.* The term "restaurant" shall mean restaurant, coffee shop, cafeteria, short order cafe, luncheonette, tavern, sandwich stand, soda fountain, drink stand, and all other public eating establishments where food is prepared, handled, and served to the public at wholesale or retail for pay, as well as kitchens and other places in which food is handled or prepared for sale elsewhere to the public.

b. *Itinerant Restaurant.* The term "itinerant restaurant" shall mean one operating for a temporary period in connection with a fair, carnival, circus, public exhibition, or other similar gathering.

c. *Employee.* The term "employee" shall mean any person who handles food or drink during preparation or serving, or who comes in contact with any eating or cooking utensils, or who is employed at any time in a room in which food or drink is prepared or served.

d. *Eating and Cooking Utensils.* "Eating and cooking utensils" shall include any kitchenware, tableware, glassware, cutlery, utensils, containers, or other equipment with which food or drink comes in contact during storage, preparation, or serving.

e. *State Board of Health.* The term "State Board of Health" shall mean the State Health Officer, or his authorized representatives.

f. *Inspector.* The term "inspector" shall mean any authorized representative of the State Board of Health.

g. *Person.* The word "person" shall mean person, firm, corporation, or association.

SECTION 2. Permits.—No person shall operate a restaurant within the state of North Carolina who does not possess an unrevoked permit from the State Board of Health. No permits to operate shall be issued until a sanitary inspection by a representative of the State Board of Health shows

that the restaurant complies with these rules and regulations. Application for such inspection shall be made in writing by the person submitting the application. All permits shall be posted in a conspicuous place in the restaurant.

Violations of any of these rules and regulations, or failure to receive a sanitary rating of at least 70%, or Grade C, shall be sufficient cause for revoking the permit. No permit to operate shall be issued or re-issued until the restaurant has been inspected or reinspected, and approved by a representative of the State Board of Health.

SECTION 3. *Placarding or Public Display of Grade Notice.*—Every restaurant shall display the grade card given by the inspector at the time of the inspection. This grade card shall be displayed at all times in a conspicuous place approved by the inspector.

SECTION 4. *Re-inspections.*—When more than one inspection of a restaurant is made in any one year, the State Board of Health shall issue a new grade card, the proprietor or manager of the restaurant shall remove and destroy the grade card previously issued, and replace it with the later grade card. Upon written request on the part of the management, a reinspection may be made, provided that when a restaurant receives a rating of 70%, or more (Grade C), a visit for consultation or advice may be made by a representative of the State Board of Health at any time, but a reinspection for the purpose of raising the grade shall not be made within 30 days. In the case of restaurants that are closed, or having a rating of less than 70%, an examination or a survey shall be made upon written request of the proprietor or manager of the restaurant at the earliest convenience of the inspector to consider the issuance or re-issuance of a permit, but no inspection shall be made for the purpose of establishing a grade for any restaurant until and unless the restaurant shall have been in operation for at least two weeks.

SECTION 5. *Publishing Grades.*—At least twice annually, or whenever a survey of restaurants has been completed, the grades shall be published.

SECTION 6. *Grading of Restaurants.*—The sanitation of all restaurants shall be based on a system of grading wherein all restaurants receiving a rating of at least 90%, or more, shall be awarded Grade A; all restaurants receiving a rating of at least 80%, and less than 90%, shall be awarded Grade B, and all restaurants receiving a rating of at least 70%, and less than 80%, shall be awarded Grade C, and no restaurant receiving a rating of less than 70%, or Grade C, shall operate. The rating and grading of all restaurants shall be based upon the following standards of construction and operation:

ITEM 1. *Floors.* The floors of all rooms in which is stored, prepared or served, or in which utensils are washed, shall be of such construction as to be easily cleaned, shall be smooth, and shall be kept clean and in good repair.

ITEM 2. *Walls and Ceilings.* Walls and ceilings of all rooms in which food is stored, prepared, or served shall be kept clean and in good repair. All walls and ceilings of rooms in which food is stored or prepared shall be

finished in light color. The walls of all rooms in which food is prepared or utensils are washed shall have a smooth, washable surface.

ITEM 3. *Doors and Windows.* When flies are prevalent, all openings into the outer air shall be effectively screened and doors shall be self-closing unless other effective means are provided to prevent the entrance of flies.

ITEM 4. *Lighting.* All rooms in which food is stored, prepared, or served, and in which utensils are washed, shall be well lighted.

ITEM 5. *Ventilation.* All rooms in which food is stored, prepared, or served, and in which utensils are washed, shall be well ventilated.

ITEM 6. *Toilet Facilities.* Every restaurant shall be provided with adequate toilet facilities conveniently located, readily accessible at all business hours, and conforming with the North Carolina Building Code. In restaurants hereafter constructed, toilet rooms shall not open directly into any kitchen, or pantry, or into any room in which utensils are washed or stored. The area of intervening rooms shall be not less than 18 square feet, and those rooms shall be constructed and maintained in a manner comparable to the toilet rooms. The doors of all toilet rooms shall be self-closing. Toilet rooms and fixtures shall be kept in a clean condition, in good repair, and the rooms well lighted and ventilated. Hand-washing signs shall be posted in each toilet room used by employees. Where a water-carried sewerage system is not available, sanitary privies constructed and maintained in accordance with the requirements of the State Board of Health will be acceptable.

ITEM 7. *Water Supply.* The water supply shall be easily accessible to all rooms in which food is prepared or utensils are washed, and shall be adequate, and of a safe, sanitary quality. Hot and cold running water shall be provided for the washing of utensils.

ITEM 8. *Drinking Water Facilities.* Facilities for the dispensing of drinking water shall be of a design approved by the State Board of Health. If water-cooling equipment is installed, it shall be of a type in which ice does not come in contact with the water. Common dippers or common drinking glasses or cups shall not be used.

ITEM 9. *Storage, Handling, and Use of Ice.* Ice, which is to be used in fountain drinks, iced water, tea, and coffee, or in connection with the chilling or serving of salads, vegetables, or cocktails shall be stored and handled in a sanitary manner.

ITEM 10. *Lavatory Facilities.* Adequate and convenient hand-washing facilities, including warm water, soap, and approved sanitary towels shall be provided. No employee shall resume work after using the toilet room without first washing his hands.

ITEM 11. *Construction of Utensils and Equipment.* All eating and cooking utensils and all show and display cases or windows, counters, shelves, tables, refrigerating equipment, sinks and other equipment or utensils used

in connection with the operation of a restaurant shall be so constructed as to be easily cleaned, and shall be kept in good repair.

ITEM 12. *Cupboards and Other Storage Spaces.* Cupboards and other storage spaces shall be kept clean, and free from offensive or musty odors. The contents shall be neatly arranged.

ITEM 13. *Cleaning and Bactericidal Treatment of Equipment and Utensils.* All equipment, including display cases or windows, counters, shelves, tables, refrigerators, stoves, hoods, and sinks shall be kept clean and free from dust, dirt, insects, and other contaminating material. All cloths used by waiters, chefs, and other employees shall be clean. Single service containers shall be used only once.

All dishes, knives, forks, spoons, drinking glasses, cups, and other eating and drinking utensils shall be thoroughly washed and subjected to an approved bactericidal process after each usage. All multi-use utensils, such as mixing bowls, cream pumps, stock pots, and other utensils used in the preparation, cooking, or serving of food and drink shall be thoroughly cleaned and subjected to an approved bactericidal process immediately after the day's operations. Drying cloths, if used, shall be kept clean, and shall be used for no other purpose.

The means of dishwashing shall consist of an approved dishwashing machine, or a double vat sink of impervious material connected directly to the city sewer, or other approved sewer, in accordance with the North Carolina Building Code. Drain boards of sufficient size to adequately accommodate the dishes shall be provided at each end of the sink, or dishwashing machine. An approved means of heating an ample supply of running water shall be installed, and connections shall be made so that each vat may receive hot and cold water service. Where single service utensils are used exclusively, a one-compartment sink may be accepted.

ITEM 14. *Storage and Handling of Utensils and Equipment.* After bactericidal treatment, no utensil shall be stored except in a clean, dry place protected from flies, dust, or other contamination, and no utensil shall be handled except in such a manner as to prevent contamination, as far as practicable. Single-service utensils shall be purchased, only in sanitary containers, and shall be stored therein in a clean, dry place until used.

ITEM 15. *Disposal of Wastes.* All wastes shall be properly disposed of, and all garbage and trash shall be kept in suitable receptacles, in such manner as not to become a nuisance.

ITEM 16. *Refrigeration.* All readily perishable food or drink shall be kept at or below 50° F., except when being prepared or served. Waste water from refrigeration equipment shall discharge into an open sink or drain, properly trapped and sewer connected, provided that where sewer connections are not available, clean, adequate, water-tight drip pans may be used.

ITEM 17. *Milk and Milk Products.* Where available, "Grade A" milk products shall be used. The term "milk products" shall be construed to mean and include sweet milk, buttermilk, cultured buttermilk, cream, and chocolate milk. These products shall be served in the original containers

in which they were received from the distributor, so that the name and grade of the contents, and the name of the producer or distributor may be readily observed by the consumers. Where two or more grades of milk are used, or found on the premises, for the purpose of scoring and rating, the lowest grade only shall be considered. Milk products shall be stored in a sanitary manner and shall be kept refrigerated, except when being served. Bottles shall not be completely submerged in water.

ITEM 18. *Wholesomeness of Food.* All food shall be wholesome and free from spoilage. Food that is spoiled, or unfit for human consumption, shall not be kept on the premises.

ITEM 19. *Sources of Shellfish.* Any restaurant serving oysters, clams, or crabmeat shall secure the same from establishments approved by the State Board of Health, or the United States Public Health Service.

ITEM 20. *Re-serving of Food.* Portions of food once served to customers shall not be served again.

ITEM 21. *Storage, Handling, and Display of Food.* All food shall be so stored, handled, and displayed as to be protected from dust, flies, vermin, handling, droplet infection, overhead leakage, and other contamination. No animals or fowls shall be kept or allowed in any room in which food is prepared or stored. All means necessary for the elimination of flies, rats, and roaches shall be used.

ITEM 22. *Health Certificates.* The management shall keep on file a medical certificate given by a physician or health officer for every cook, waiter, dish washer, or handler of food or drink employed in the restaurant, showing that the employee is free from tuberculosis, syphilis, gonorrhea, skin diseases, and is not a typhoid carrier. Such certificates shall have been issued within twelve months of the date of inspection. A permit from the health officer shall be required before any employee begins to work. Certificates issued by private physicians shall be presented to the health officer before such permit to work shall be issued.

ITEM 23. *Cleanliness of Employees.* All employees shall wear clean outer garments, and shall keep their hands clean at all times while handling food, drink, utensils, or equipment.

ITEM 24. *Miscellaneous.* Waste material, obsolete and unnecessary articles, tin cans, rubbish, and other litter shall not be permitted to accumulate on the premises of the restaurant. Cisterns or other receptacles containing standing water shall be kept tightly covered or screened. There shall be no fly and mosquito breeding places, nor rat harborages, hog pens, or undrained areas on the premises. The surroundings of all restaurants shall be maintained in a neat, orderly, and sanitary condition.

None of the operations connected with a restaurant shall be conducted in any room used for domestic purposes. Soiled linens, coats, and aprons shall be kept in containers provided for this purpose.

No article, polish, or other substance containing any cyanide preparation or other poisonous material shall be used for the cleaning or polishing of eating or cooking utensils.

SECTION 7. *Notification of Disease.*—Notice shall be sent to the Health Officer immediately by the restaurant manager, or by the employee concerned, if he or any employee contracts any infectious, contagious, or communicable disease, or has a fever, a skin eruption, a cough lasting more than three weeks, or any other suspicious symptom. It shall be the duty of any such employee to notify the restaurant manager immediately when any of the said conditions obtain, and if neither the manager nor the employee concerned notifies the health officer immediately when any of the said conditions obtain, they shall be held jointly and severally to have violated this section. A placard containing this section shall be posted in all toilet rooms used by employees, or dressing rooms or kitchens.

SECTION 8. *Procedure When Infection Suspected.*—When suspicion arises as to the possibility of transmission of infection from any restaurant employee, the health officer is authorized to require any or all of the following measures: (1) the immediate exclusion of the employee from all restaurants; (2) the immediate closing of the restaurant concerned until no further danger of disease outbreak exists, in the opinion of the health officer; (3) adequate medical examinations of the employee and of his associates, with such laboratory examinations as may be indicated.

(3) Regulations Governing Counter Type Ice Cream Freezer
Regulations Governing the Operation of Counter Type Ice Cream Freezer
Adopted By the Board of Agriculture Under Authority Granted by Section 8, Chapter 169, Laws of 1921, As Amended by Chapter 431, Laws of 1933.

Effective March 10, 1938

Counter Ice Cream Freezers.—The term counter freezer as hereinafter used, shall include the counter type freezing machine or similar types usually operated in retail establishments and located in rooms which are not used exclusively for manufacturing and handling of ice cream or other frozen products.

The following rules and regulations covering the installation, maintenance and operation of counter type ice cream freezers shall be observed where such equipment is operated.

ARTICLE I

No counter freezer unit shall be installed in such a way that it is subject to contamination by dirt, dust, flies or handling by customers. To this end the following necessary protection shall be provided for the various types of installations.

SECTION 1. Any portion of the room where a counter freezer is installed shall have a tight and impervious floor or a solid floor covered with tight linoleum or other approved washable material.

SEC. 2. The walls and ceilings of such room shall be of a suitable impervious material which shall be smooth and tight, cleanable and clean; the ceiling shall not be less than eight feet from the floor.

SEC. 3. Necessary protection from unclean and unsanitary conditions in the process of production, preparation, packing and distribution, shall be provided.

SEC. 4. Whenever a counter freezer is installed in a drug, confectionery or other food establishment to which the public has access, such freezer shall be enclosed in a tight glass enclosure which shall extend above the highest point of the freezer a sufficient height to enable the operator to fill, operate and clean the freezer; the enclosure shall have a tight dust-proof top; such enclosure shall be on the three sides nearest to the place or places where the public ordinarily comes.

SEC. 5. No counter freezer unit shall be installed in any open front building or in any other enclosure not protected from dirt, dust and flies in an approved manner.

SEC. 6. Installations of counter freezers shall not be made beneath transoms, nor within 12 ft. of outside doors, where the street dust and flies may contaminate the product, unless there be provided a complete ventilation enclosure on four sides and top.

SEC. 7. No counter freezer unit shall be installed or maintained in any cellar, basement, or other location not provided with sufficient light and adequate ventilation, which may be by means of windows, skylights, air shafts or ducts, or if necessary by approved mechanical apparatus. Counter Freezer may be installed in basement stores and the like where any other food service is maintained, and where above requirements of sanitation are complied with.

SEC. 8. An adequate sink or boiler of sufficient size shall be provided for such hot water as will permit the complete immersion of all utensils and other equipment. Such sinks or boiler shall have proper trap connection to sewer.

Chlorine solutions containing at least 100 parts by weight per million of free chlorine may be used when dissolved in water not less than 120 degrees F. as a sterilizing medium for both utensils and freezer.

ARTICLE II.

After each day's operation, all equipment, containers and utensils shall be promptly and thoroughly cleaned with brushes, hot water and suitable alkali and sterilized with boiling water and chlorine solution of the approved strength. The freezer shall be sterilized just prior to starting the freezing operation, and immediately after its completion at the finish of the day's operation.

ARTICLE III.

No cloths of any kind shall be used to wipe off the interior of the freezer or containers after sterilization. The cans or containers shall be inverted on a clean rack to drain and dry. The outside of the freezer and the top of the cabinet shall be kept clean at all times.

ARTICLE IV.

All persons engaged in the manufacture of ice cream, other frozen milk products or water ices, or the handling, cleaning and care of the equipment and containers shall submit to a medical examination at the time of employment, and at least annually thereafter, and shall furnish records of such medical examination to the inspectors of the department upon request.

ARTICLE V.

The operator engaged in the making of ice cream shall wear a white uniform, either coat and apron or a long white coat.

ARTICLE VI.

The operator engaged in the making of ice cream, other frozen milk products or water ices shall not smoke or use tobacco in any manner while preparing for the making and making such products.

ARTICLE VII.

Only mixes for ice cream, and other frozen milk products completely pasteurized by methods approved by the Department of Agriculture shall be used. All containers shall be sealed and correctly tagged with the name of the maker and date of pasteurization. The Commissioner of Agriculture or other officer authorized to do so may at his option exclude the use of any mix which is not pasteurized in accordance with requirements of the Department of Agriculture.

(a) The term "pasteurization," or "pasteurized," and similar terms, are hereby defined as the process of heating every particle of ice cream mix or the mix for other frozen milk products referred to in these regulations to a temperature of not less than 150° F. and holding at such temperature for not less than 30 minutes in pasteurizing apparatus approved by the Department of Agriculture. Provided that nothing contained in this definition shall be construed as disbaring any other process which has been demonstrated as of at least equal efficiency and is approved by the Department of Agriculture.

(b) Under no circumstances shall any mix be repasteurized.

ARTICLE VIII.

Ice cream, other frozen milk products and water ices at no time after pasteurization and until delivery for consumption shall show a bacterial plate count in excess of 100,000 bacteria per c.c. Bacterial plate counts shall be made in accordance with the latest standard methods recommended by the American Public Health Association.

ARTICLE IX.

Mix, milk or cream, used for ice cream or other frozen milk products shall be refrigerated immediately when received and kept in refrigeration at a temperature of not over 40° F.

ARTICLE X.

Ice cream or other frozen products may be dispensed directly from the freezer into a sanitary glass or container, to be immediately consumed by the purchaser. Where it is to be hardened for future sale, it shall be drawn from the freezer into sanitary cans or containers, each fitted with a suitable cover and immediately placed in cold storage cabinets for hardening.

ARTICLE XI.

(a) Ice cream, other frozen milk products and water ices stored, preparatory to delivery to the retail trade, shall be kept in refrigerators having a temperature of not more than 10° F; *provided*, the provisions of this section shall not apply to the handling of frosted malted milk.

(b) Ice cream, other frozen milk products and water ices shall be kept frozen until dispensed, and the refreezing of such products is hereby forbidden.

(4) Inspection of Ice Cream Plants, Creameries, and Cheese Factories

SECTION 106-246. *Cleanliness and Sanitation Enjoined; Wash Rooms and Toilets, Living and Sleeping Rooms; Animals.*—For the protection of the health of the people of the state, all places where ice cream, frozen custard, milk sherbet, sherbet, water ices, and other similar frozen food products are made for sale, all creameries, butter and cheese factories, when in operation, shall be kept clean and in a sanitary condition. The floors, walls, and ceilings of all work rooms where the products of the plants named herein are made, mixed, stored or handled shall be such that same can be kept in a clean and sanitary condition. All windows, doors, and other openings shall be effectively screened during fly season. Suitable wash rooms shall be maintained, and if a toilet is attached, it shall be of a sanitary construction and kept in a sanitary condition. No person shall be allowed to live or sleep in such a factory unless rooms so occupied are separate and apart from the work or storage rooms. No horses, cows, or other animals shall be kept in such factories or close enough to contaminate products of same unless separated by impenetrable wall without doors, windows, or other openings.

(1921, c. 169, s. 1; 1933, c. 431, s. 1; C.S. 7251 (a).)

SEC. 106-247. *Cleaning and Sterilization of Vessels and Utensils.*—Suitable means or appliances shall be provided for the proper cleaning or sterilizing of freezers, vats, mixing cans or tanks, conveyors, and all utensils, tools and implements used in making or handling cream, ice-cream, butter or cheese and all such apparatus shall be thoroughly cleaned as promptly after use as practicable.

(1921, c. 169, s. 2; C.S. 7251 (b).)

SEC. 106-248. *Purity of Products.*—All cream, ice-cream, butter, cheese, or other products produced in places named herein shall be pure, wholesome, and not deleterious to health, and shall comply with the standards of purity, sanitation, and rules and regulations of the board of agriculture provided

for in section 106-253, and whole milk, sweet cream, and ice cream mix shipped into this state from other states shall meet the same requirements and be subject to the same regulations and shall carry a tag or label showing grade or standard of quality of product.

(1921, c. 169, s. 3; 1933, c. 431, s. 2; C.S. 7251 (c).)

SEC. 106-249. *Receivers of Products to Clean Utensils Before Return.*—Every person, company, or corporation who shall receive milk, cream, or ice-cream which is delivered in cans, bottles, or other receptacles, shall thoroughly clean same as soon as practicable after the contents are removed and before the said receptacles are returned to shipper or person from whom the same was received or before such receptacles are delivered to any carrier to be returned to shipper.

(1921, c. 169, s. 4; C.S. 7251 (d).)

SEC. 106-250. *Correct Tests of Butter Fat; Tests by Board of Agriculture.*—Creameries and factories that purchase milk and cream from producers of same on a butter-fat basis, and pay for same on their own test, shall make and pay on correct test, and any failure to do so shall constitute a violation of this article. The board of agriculture, under regulations provided for in section 106-253, shall have such test made of milk and cream sold to factories named herein that will show if dishonest tests and practices are used by the purchasers of such products.

(1921, c. 169, s. 5; C.S. 7251 (e).)

SEC. 106-251. *Department of Agriculture to Enforce Law; Examinations.*—It shall be the duty of the department of agriculture to enforce this article, and the board of agriculture shall cause to be made by the experts of the department such examinations of plants and products named herein as are necessary to insure the compliance with the provisions of this article. For the purpose of inspection, the authorized experts of the department shall have authority, during business hours, to enter all plants, or storage rooms where cream, ice-cream, butter, or cheese or ingredients used in same are made, stored, or kept, and any person who shall hinder, prevent, or attempt to prevent any duly authorized expert of the department in the performance of his duty in connection with this article shall be guilty of a violation of this article.

(1921, c. 169, s. 6; C.S. 7251 (f).)

SEC. 106-252. *Closure of Plants for Violation of Article; Certificates to Solicitor of District.*—If it shall appear from the examinations that any provision of this article has been violated, the commissioner of agriculture shall have authority to order the plant or place of manufacture closed until the law is complied with. If the owner or operator of place refuses or fails to comply with the order, law, or regulations, the commissioner shall then certify the facts in the case to the solicitor in the district in which the violation was committed.

(1921, c. 169, s. 7; C.S. 7251 (g).)

SEC. 106-253. *Standards of Purity and Sanitation.*—The board of agriculture is authorized to make such definitions and to establish such standards

of purity for products and sanitation for plants or places of manufacture named herein with such regulations, not in conflict with this article, as shall be necessary to make provisions of this article effective and insure the proper enforcement of same, and the violation of said standards of purity or regulations shall be deemed to be a violation of this article. It shall be unlawful for any person, firm or corporation to use the words "cream," "Milk," or "Ice-cream," or either of them, as a part of or in connection with any trade name or brand of any frozen dessert manufactured, sold or offered for sale and not in fact made from dairy products under and in accordance with regulations, definitions or standards approved or promulgated by the board of agriculture.

1921, c. 169, s. 8; 1933, c. 431, s. 3; C.S. 7251 (h).)

SEC. 106-254. *Inspection Fees; Wholesalers; Retailers and Cheese Factories.*—For the purpose of defraying the expenses incurred in the enforcement of this article, the owner, proprietor, or operator of each ice cream factory where ice cream, frozen custard, milk sherbet, water ices and/or other similar frozen food products are made or stored or cheese factory or creamery in this state that disposes of its product at wholesale to retail dealers, to be resold, shall pay to the commissioner of agriculture during the month of July of each year an inspection fee of twenty (\$20) dollars, and each maker of ice-cream, frozen custard, milk sherbet, water ices, and/or other similar frozen food products who disposes of his product at retail only, and cheese factories, shall pay to the commissioner of agriculture an inspection fee of five dollars (\$5) during the month of July of each year.

(1921, c. 169, s. 9; 1933, c. 431, s. 4; C.S. 7251 (i).)

SEC. 106-255. *Violation of Article a Misdemeanor; Punishment.*—Any person, firm, or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed twenty-five dollars for the first offense, and for each subsequent offense in the discretion of the court.

(1921, c. 169, s. 10; C.S. 7251 (j).)

(5) Sanitation of Drink Stands

Rules and Regulations Governing the Sanitation of Drink Stands as Adopted By the State Board of Health Under Authority of Chapter 309, Public Laws of 1941.

Adopted May 21, 1941

Drink Stands.—Drink stands, soda fountains, beer taverns, and similar establishments in which no food is prepared on the premises, but where drinks are served in containers other than bottles, paper cups, or other single service containers, shall be required to provide the following facilities and use the following methods for the washing and bactericidal treatment of glasses, cups, mugs, and other multi-use containers:

(1) The requirements for the washing and bactericidal treatment of utensils as found in Item 13 of Section 6 of the restaurant regulations shall apply.

(2) All employees shall have health certificates as provided in Item 22 of Section 6 of the restaurant regulations.

(3) Toilet facilities shall be provided for patrons and employees as found in Item 6 of Section 6 of the restaurant regulations.

(6) Rulings of Labelling of Food Products

Rulings of the State Board of Agriculture Under the Food Law in Regard to Labeling Food Products.

Adopted June 28, 1938

A label must be, as far as possible, attached to each package, and contain, in addition to other information, the name of the material, the name and address of the manufacturer, importer or jobber. When the words "artificial," "imitation," "compound," "adulterated," or other words of similar import, are required, they must be on the principal label and immediately precede or follow the word or words they modify, which must be the principal word or words of the label, and be in at least half the size and same style of type and on the same kind of background as the word or words with which they are closely associated. The principal words in the label must be printed in either dark-colored letters on light-colored background, or light-colored letters on dark-colored background. Any statement that is required on the principal label or a barrel or cask of molasses, molasses compound, syrup or compound syrup, vinegar, compound vinegar or imitation vinegar, must appear on one end or head of the barrel or cask; and if the principal label or any part of it appears on both ends of barrel or cask, they shall be identical, one to the other.

The label on bottled soft drinks must bear the name and address of the bottler.

Where the presence of preservatives, coloring matter or other substance or substances is required to be printed on the label, the printing must be done clearly and conspicuously on the label, in type not smaller than **BREVIEW HEAVY GOTHIC CAPS**, and on the same kind of background as the rest of the label.

Retail dealers, while offering food or beverage for sale, must keep the label so that it may be seen by purchaser or inspector, and the label must be so kept that it will remain legible.



PART TWO

FEDERAL LAWS

CHAPTER I

FEDERAL NARCOTIC LAWS

Introductory Note:

The Act of Congress approved December 17, 1914, as amended, known as the Harrison Narcotic Law, imposes special taxes upon persons engaged in active trade or business involving opium or coca leaves, or any compound, manufacture, salt, derivative or preparation of opium or coca leaves.

The Commissioner of Narcotics and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, and pursuant to the Act of Congress, promulgated regulations relating to the importation, manufacture, production, compounding, sale, dealing in, dispensing or giving away opium or coca leaves, or any compound, manufacture, salt, derivative or preparation thereof. These regulations have been entitled "Regulations No. 5." With deletions, some of the important provisions of the Act of Congress and the regulations promulgated pursuant thereto are set forth as follows:

1. REGISTRATION

SECTION 3232. *United States Revised Statutes*.—No person shall be engaged in, or carry on, any trade or business hereinafter mentioned until he has paid a special tax therefor in the manner hereinafter provided.

SEC. 1. That on or before July 1 of each year every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, or gives opium or coca leaves, or any compound, manufacture, salt, derivative, or preparation thereof, shall register with the collector of internal revenue of the district his name or style, place of business, and place or places where such business is to be carried on, and pay the special taxes hereinafter provided;

Every person who on January 1, 1919, is engaged in any of the activities above enumerated, or who between such date and the passage of this act first engages in any of such activities, shall within 30 days after the passage of this act make like registration, and shall pay the proportionate part of the tax for the period ending June 30, 1919; and

Every person who first engages in any of such activities after the passage of this act shall immediately make like registration and pay the proportionate part of the tax for the period ending on the following June 30th.

(a) Regulations

ARTICLE 3. *Persons Liable*.—Liability to payment of special tax and registration attaches to every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, administers, or gives away narcotics. As to the tax rates applicable to a person engaged in one or more of the foregoing activities see Article 13.

ART. 4. *Manner and Time of Registration.*—Every person required to register shall execute and file with the collector for the district in which he proposes to engage in any activity involving the use of narcotic drugs, an application for registration on Form 678 or 678-A and pay the special tax or taxes enumerated in Article 13. Form 678-A shall be executed by new applicants and approved by the collector before the activity is commenced. Form 678 shall be executed and filed on or before the succeeding July 1, and annually thereafter as long as liability is incurred. These forms may be obtained from the collector.

ART. 6. *Evidence of Qualification.*—The application for registration of every person shall be supported by his affidavit, or acknowledgement executed in accordance with Article 9 showing that, under the laws of the jurisdiction in which he is operating or proposes to operate, he is legally qualified or lawfully entitled to engage in the activities for which registration is sought.

2. FALSE APPLICATIONS

SEC. 3451. *United States Revised Statutes.*—Every person who simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, or who procures the same to be falsely or fraudulently executed, or who advises, aids in, or connives at such execution thereof, shall be imprisoned for a term not less than one year nor more than five years; and the property of which such false or fraudulent instrument relates shall be forfeited.

(a) Regulations

ART. 7. *False Applications.*—The false or fraudulent execution or signing of application for registration or supporting affidavit as required by the preceding article shall subject the offending person to the penalties provided by Section 3451 of the Revised Statutes.

3. INVENTORY REQUIRED

Every person making application for registry or reregistry in any class (see Art. 13), except Classes I and II, shall, as of December 31 preceding the date of his application, or any date between December 31 and the date of applying for such registry or reregistry, prepare under oath or affirmation, in duplicate, an inventory of all narcotic drugs and preparations on hand at the time of making such inventory. The inventories shall be prepared on Form 713, copies of which may be obtained from collectors upon request. If the taxpayer is engaged in business in more than one class, a separate inventory shall be prepared for each class. A Class V registrant is not required to make an inventory of preparations or remedies exempt under section 6, but he is required to make an inventory of all nonexempt narcotic drugs and preparations in his possession. The original inventory shall be forwarded to the collector with the application for registration, and the duplicate shall be kept on file by the maker for a period of two years.

(Art. 10 of Regulations.)

SECTION 1. * * * Importers, manufacturers, producers, or compounders, lawfully entitled to import, manufacture, produce, or compound any of the

4. CLASSIFICATION

aforesaid drugs, \$24 per annum; wholesale dealers, lawfully entitled to sell and deal in any of the aforesaid drugs, \$12 per annum; retail dealers, lawfully entitled to sell and deal in any of the aforesaid drugs, \$3 per annum; physicians, dentists, veterinary surgeons, and other practitioners, lawfully entitled to distribute, dispense, give away, or administer any of the aforesaid drugs to patients upon whom they in the course of their professional practice are in attendance, \$1 per annum or fraction thereof during which they engage in any of such activities; persons not registered as an importer, manufacturer, producer, or compounder and lawfully entitled to obtain and use in a laboratory any of the aforesaid drugs for the purpose of research, instruction, or analysis shall pay \$1 per annum, but such persons shall keep such special records relating to receipt, disposal, and stocks on hand of the aforesaid drugs as the Commissioner of Narcotics, with the approval of the Secretary of the Treasury, may by regulation require. Such special records shall be open at all times to the inspection of any duly authorized officer, employee, or agent of the Treasury Department.

Every person who imports, manufactures, compounds, or otherwise produces for sale or distribution any of the aforesaid drugs shall be deemed to be an importer, manufacturer, or producer.

Every person who sells or offers for sale any of said drugs in the original stamped packages, as hereinafter provided, shall be deemed a wholesale dealer.

Every person who sells or dispenses from original stamped packages, as hereinafter provided, shall be deemed a retail dealer:

SEC. 3237. United States Revised Statutes, as amended by Section 322, Act of June 26, 1936.

(a) All special taxes shall become due on the 1st day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for one year, and in the later case it shall be reckoned proportionately, from the 1st day of the month in which the liability to a special tax commenced, to and including the 30th day of June following * * *.

(a) Regulations

ART. 13. *Rates of Tax.*—Persons subject to tax are divided into classes as shown by the table below:

Class	Annual Tax Rate	Persons liable
I	\$24	Importers, manufacturers, producers, compounders
II	12	Whole dealers
III	3	Retail dealers
IV	1	Physicians, dentists, veterinary surgeons, and other practitioners
V	1	*Manufacturers of and dealers in exempt preparations (including dispensing physicians.)
VI	1	Persons not registered in Class I, but lawfully entitled to obtain and use in a laboratory narcotics for the purpose of research, instruction, or analysis.

* Persons paying tax in any of the Classes I to IV, inclusive, are not required to pay tax in Class V on account of manufacture or sale of exempt preparations.

When business is done during the month of July, tax shall be paid for the full year. The tax in Classes IV or V is at the rate of \$1 a year or any fraction thereof, regardless of when business is first commenced. In Classes I to III, inclusive, and in Class VI, if business is commenced after the month of July, the amount due is to be reckoned proportionately by months from the first day of the month in which business is begun to July 1 following.

ART. 14. *Importers*.—Every person who imports narcotic drugs is subject to tax as an importer at the rate of \$24 per annum in Class I. A manufacturer or compounder who is also an importer is not thereby required to pay more than one tax.

ART. 15. *Manufacturers and Compounders*.—As a general rule, every person who, by compounding, mixing, or other process of manufacture, produces narcotic drugs or preparations for sale or distribution is subject to tax as a manufacturer or compounder at \$24 per annum in Class I, with the following exceptions as to retail dealers:

Prescription Compounding.—Persons who have paid tax as retail dealers (see Art. 18) do not incur liability as manufacturers or compounders on account of compounding narcotic preparations to fill legitimate prescriptions of registered practitioners, even though the preparations are compounded in advance of receipt of prescriptions, so long as they are used for prescription purposes only.

Aqueous and Oleaginous Solutions.—Persons qualified as retail dealers may also supply registered practitioners on order forms, or exempt officials on orders, in quantities not exceeding one ounce at any one time, with aqueous or oleaginous solutions, in which the narcotic content does not exceed a greater proportion than 20 per cent of the complete solution, to be used in legitimate office practice. In cases where the dealer is also registered in Class I or Class II, or both, these transactions should not appear in the monthly returns which he is required to make as a member of these last-named classes. The original order forms must be filed by the dealer with his narcotic prescriptions. Each package containing an aqueous or oleaginous solution so furnished must bear a label showing the date of the order, number of the order form if any, the name and proportion of narcotic drug contained in the solution, and the name, address, and registry number of the vendee and vendor, respectively.

ART. 16. *Producers*.—Every person who produces narcotic drugs or preparations to be sold on order forms not by mixing or compounding but by merely transferring the contents of one package or of a number of packages to one or more packages of the same or of greater or smaller size is liable to tax as a producer at the rate of \$24 per annum in Class I. As to liability to stamp tax, see Article 51.

ART. 17. *Wholesale Dealers*.—Every person who sells or offers for sale narcotic drugs or preparations in original stamped packages is subject to tax as wholesale dealer at the rate of \$12 per annum in Class II.

ART. 18. *Retail Dealers*.—Every person who sells narcotic drugs or preparations from original stamped packages, with or without compounding,

pursuant to prescriptions written by registered practitioners in the course of professional practice only is liable to tax as a retail dealer at the rate of \$3 per annum in Class III, with the following exceptions:

Manufacturers.—One registered as a member of Class I, who is qualified under the laws of the jurisdiction in which his place of business is located to fill prescriptions, will be permitted to do so from original stamped packages of his own production without payment of tax as a retail dealer. If, however, prescriptions are filled from packages produced by any other person, additional liability to tax as a retail dealer will be incurred.

Practitioners.—A duly qualified practitioner (see Art. 19) is not required to pay additional tax on account of the sale of narcotic drugs for legitimate medical purposes to his own bona fide patients. A practitioner who operates a drug store and in his capacity as a druggist sells narcotic drugs or preparations, pursuant to prescriptions written by other practitioners, incurs additional liability as a retail dealer.

ART. 19. *Practitioners.*—Physicians, dentists, veterinary surgeons, and other practitioners, including institutions, who prescribe, distribute, dispense, give away, or administer narcotic drugs or preparations, and who are entitled to do so under the laws of the jurisdiction in which they practice, are subject to tax at the rate of \$1 per annum or fraction thereof in Class IV.

Interdistrict Practice.—A practitioner maintaining an office where he is duly registered with the collector of the district in which the office is located, and where his complete stock of narcotic drugs and all narcotic records are kept, may distribute, dispense, give away, administer, or prescribe narcotic drugs in other collection districts in which he may be lawfully engaged in the practice of his profession, within the United States, in the course of his professional practice only, without incurring additional tax liability.

ART. 20. *Laboratory Use.*—Chemists occupying an independent status and not that of employees, in other words, in business for themselves, who, being thereunto lawfully entitled, make analysis of narcotic drugs or preparations or use such drugs in analyzing other substances in a laboratory, and other lawfully entitled persons who obtain and use in a laboratory any narcotic drugs or preparations for the purpose of research, instruction, or analysis, if not registered in Class I and not manufacturing or compounding narcotic drugs or preparations for sale or for removal for consumption or sale, are liable to tax at the rate of \$1 per annum in Class VI.

5. PARTICULAR SITUATIONS

SECTION 1. (Cont.) * * * *Provided*, that the office, or if none, the residence, of any person shall be considered for the purpose of this Act his place of business; but no employee of any person who has registered and paid special tax as herein required, acting within the scope of his employment, shall be required to register and pay special tax provided by this section: * * *

SEC. 3235. *United States Revised Statutes.*—The payment of the special tax imposed shall not exempt from an additional special tax the person carrying on a trade or business in any other place than that stated in the collector's register; but nothing herein contained shall require a special tax

for the storage of goods, wares, or merchandise in other places than the place of business, nor, except as hereinafter provided, for the sale by manufacturers or producers of their own goods, wares, and merchandise, at the place of production or manufacture, and at their principal office or place of business, provided no goods, wares, or merchandise shall be kept except as samples at said office or place of business.

SEC. 3236. *United States Revised Statutes*.—Whenever more than one of the pursuits or occupations hereinafter described are carried on in the same place by the same person at the same time, except as hereinafter provided, the tax shall be paid for each according to the rates severally prescribed.

(a) Regulations

ARTICLE 21. *Dual Liabilities*.—As a general rule, one conducting two or more classes of business at the same location must pay a separate tax with respect to each such class. However, see Article 13 as to Class V tax.

ART. 22. *Several Places of Business*.—Generally a taxpayer must pay as many special taxes as he has places of business. Thus if a concern has one or more separate branches where any of the various taxable business is carried on, tax must be paid for each branch separately. However, a manufacturer, compounder or producer who has paid tax as such, and who has a principal office or place of business separate and apart from the place where the actual manufacturing, compounding or producing is done, is not required to pay an additional tax with respect to such office or place of business, provided no merchandise except samples is kept thereat, on account of orders taken at such office or place of business for narcotics to be delivered from the place of manufacture, compounding or production. If sales are made at a principal office or place of business separate and apart from the place of manufacture, compounding or production, from stock kept at such office or place of business, tax as a wholesale or retail dealer, or both, as the case may be, must be paid with respect to such office or place of business.

ART. 23. *Warehouses*.—Tax does not attach with respect to a warehouse where narcotic drugs are stored, provided no sales are made at such place.

ART. 24. *Itinerant Vendors*.—No person is permitted to dispense or deal in narcotic drugs or preparations except upon orders received or engagements made at, with respect to, or by reason of, a fixed address. A peddler of such drugs or preparations will be regarded as incurring a separate tax liability and committing an additional offense at each place where a sale is made.

ART. 25. *Partnerships*.—A partnership is subject to the same tax liability as an individual. Should either of the partners also individually engage in a taxable activity, he will incur additional liability with respect to such activity.

ART. 26. *Institutions*.—Hospitals, colleges, medical and dental clinics, sanatoriums, and other institutions not exempt as public institutions are subject to the same special tax liability as other persons dealing in or handling narcotic drugs or preparations in the same manner.

ART. 27. *Principals*.—Principals, rather than agents, are liable to the taxes imposed. Employers and other principals will be regarded as responsible for the acts of employees and other agents within the scope of their employment.

ART. 28. *Employees*.—An employee of a person who has registered and paid tax will not himself incur liability to tax so long as he acts solely within the scope of his employment. However, an employee, who, within or without the scope of his employment, does any unlawful act, will be held personally liable.

ART. 29. *Nurses*.—Nurses are regarded as agents of the practitioners or institutions under whose direction or supervision their duties are performed, and they are not permitted to register, nor are they permitted to be in possession of narcotic drugs or preparations except as such agents, or as patients. Any unused narcotic drugs left by a practitioner with a nurse, to be administered during his absence, upon discharge of the nurse must be returned to the practitioner, who will account for the drugs on his records. Any such narcotic drugs found in the possession of a nurse not at the time under the supervisions of a practitioner shall be forfeited to the Government.

ART. 30. *Traveling Salesmen*.—Traveling salesmen who merely solicit orders and forward them to their respective principals are not required to register or pay any tax.

ART. 31. *Operation of State Laws*.—Payment of special tax under Federal law confers no right or privilege to conduct business contrary to State law. The holder of a special-tax stamp issued by the Federal Government may still be punishable under a State law prohibiting or regulating the production, manufacture, or sale of narcotic drugs. On the other hand, compliance with State law affords no immunity under Federal law. Persons who engage in business in violation of the law of a State are, nevertheless, required to pay special tax as imposed under the internal-revenue laws of the United States.

6. DELINQUENT AND FALSE RETURNS

SEC. 3176. United States Revised Statutes, as amended by Sec. 1103 of the Revenue Act of 1926 and by Sec. 619 (d) of the Revenue Act of 1928 * * * If the failure to file a return (other than a return of income tax) or a list is due to sickness or absence, the collector may allow such further time, not exceeding 30 days, for making and filing the return or list as he deems proper. * * * In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid

before the discovery of the neglect, falsity, or fraud, in which case the amount so added, shall be collected in the same manner as the tax.

Sec. 406 of the Revenue Act of 1935.—In the case of failure to make and file an internal-revenue tax return required by law within the time prescribed by law or prescribed by the Commissioner in pursuance of law, if the last date so prescribed for filing the return is after the enactment of this Act, if a 25 per centum addition to the tax is prescribed by existing law, then there shall be added to the tax, in lieu of such 25 per centum: 5 per centum if the failure is for not more than 30 days, with an additional 5 per centum for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per centum in the aggregate.

SEC. 3184. *United States Revised Statutes, as amended by Sec. 805 of the Revenue Act of 1938.*—Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof. If such person does not pay the taxes within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of five per centum additional upon the amount of taxes, and interest at the rate of six per centum per annum from the date of such notice to the day of payment.

(a) Regulations

ART. 32. *Delinquent Returns.*—Every person from whom a special-tax return is required who, without reasonable cause, fails to file such return on time is subject to certain penalties. Under section 406 of the Revenue Act of 1935 the penalty for delinquency is 5 per cent, if the failure is for not more than 30 days, and an additional 5 per cent for each additional 30 days, or fraction thereof, during which the delinquency continues, not to exceed 25 per cent in the aggregate.

ART. 33. *Sickness or Absence.*—If the collector is satisfied that failure to file a return is due to sickness or absence, he may extend the time for not more than 30 days. Since any member of a firm may make the return, sickness or absence of less than all the members of a firm will not relieve from liability to the penalty for failure to make return, nor afford ground for extension of time.

ART. 34. *Failure of Agent.*—If an attorney or agent is delegated to make a return and pay special tax, the principal will incur the penalty if the return is not filed within the time prescribed by law.

ART. 35. *Delinquent Payment.*—Failure to pay the amount of an assessment within 10 days after issuance of Form 17 (First Notice and Demand) causes to accrue a 5 per cent penalty and interest at the rate of 6 per cent per annum from the date of such notice to the date of payment.

ART. 36. False Returns.—For making a false or fraudulent return additional liability amounting to 50 per cent of the total tax is incurred. If a return covers only a portion of a year or period for which liability is incurred, the return is false as a whole and not merely as to that portion of the year or period omitted.

ART. 37. When Penalty Accrues.—In view of the positive language of section 1 of the Act, all persons engaging in business under this Act will be regarded as delinquent, and the penalties provided are applicable, unless applications are filed not later than July 1 of each year or on or before the date upon which liability is incurred.

7. CHANGES AFTER TAX PAYMENT

SEC. 3241. United States Revised Statutes.—When any person who has paid the special tax for any trade or business dies, his wife or child, or executors or administrators or other legal representatives, may occupy the house or premises, and in like manner carry on, for the residue of the term for which the tax is paid, the same trade or business as the deceased before carried on, in the same house, and upon the same premises, without the payment of any additional tax. And when any person removes from the house or premises for which any trade or business was taxed to any other place, he may carry on the trade or business specified in the collector's register at the place to which he removes without the payment of any additional tax: *Provided*, That all cases of death, change, or removal, as aforesaid, with the name of the successor to any person deceased, or of the person making such change or removal shall be registered with the collector, under regulations to be prescribed by the Commissioner of Internal Revenue.

(a) Regulations

ART. 38. Change of Control.—Certain persons other than the taxpayer may, without incurring additional liability, carry on the business at the same address and for the remainder of the period for which special tax was paid. To secure such right the party or parties continuing the business must execute, within 30 days, a return on Form 678-A, showing the basis of the right. Under the conditions indicated the parties having such right include the following:

- (1) The relict, children, or other legal representatives of a deceased taxpayer.
- (2) A receiver or referee in bankruptcy, or an assignee for the benefit of creditors.
- (3) The partner or partners remaining after death or withdrawal of a member.

Special tax, reckoned from the first day of the month in which the change occurs, is incurred and must be paid by the parties indicated under the conditions stated:

- (1) Where additional partners are taken into a firm operating under the old or a new firm name.

- (2) Where a corporation is formed to continue the business of a partnership, or a new charter is issued to a former corporation.
- (3) Where a stockholder or other party continues a business previously conducted by a corporation, whether or not the corporation is dissolved.

ART. 39. *Qualification of Successor.*—No collector will issue a special-tax stamp to any person who desires to carry on business as shown in the last paragraph of Article 38 until the collector is satisfied that such person is lawfully entitled to obtain registration.

ART. 40. *Change of Name or Location.*—The name of an individual, firm, or corporation that has paid special tax may be changed, or a special-tax payer may relocate his place of business, without incurring additional tax liability, provided the change is registered with the collector.

ART. 41. *Registration.*—A special-tax payer who changes his name or relocates his place of business shall within 30 days execute a new return on Form 678-A, marking it "Revised Registry." The return shall set forth the date of change and the new name or address. The return shall be forwarded with the special-tax stamp to the collector who issued the stamp for recording the change.

ART. 42. *Removal From District.*—Where a taxpayer removes his business to another address within the district the collector will enter on his Record 10 the new address and the date of removal, and will note the change on the face of the special-tax stamp which he will return to the taxpayer.

ART. 43. *Removal to Another District.*—Where a taxpayer removes his business to another district the collector who issued the stamp will enter on his Record 10 the new address and date of removal, and will transmit the stamp to the collector of the district to which the taxpayer removed. The collector of that district will then make entry on his Record 10, as in the case of a new registrant, and note the taxpayer's new address and the collector's name, title, and district, and the date, on the stamp, which will be returned to the taxpayer.

ART. 44. *Liability for Failure to Register Change.*—A person succeeding to a business for which tax has been paid, or a taxpayer who relocates his business, without registering the change within 30 days, as required by Articles 38 and 41, respectively, will be liable to the tax, to the penalty set forth in Article 32 for failure to make return, and also to penalty for carrying on business without payment of tax.

8. ORDER FORMS

SECTION 2. That it shall be unlawful for any person to sell, barter, exchange, or give away any of the aforesaid drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue. Every person who shall accept any such order, and in pursuance thereof shall sell, barter, exchange, or give away any of

the aforesaid drugs, shall preserve such order for a period of two years in such a way as to be readily accessible to inspection by any officer, agent, or employee of the Treasury Department duly authorized for that purpose, and the State, Territorial, District, municipal, and insular officials named in section 5 of this Act. Every person who shall give an order as herein provided to any other person for any of the aforesaid drugs shall, at or before the time of giving such order, make or cause to be made a duplicate thereof on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue, and in the case of the acceptance of such order, shall preserve such duplicate for said period of two years in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned. Nothing contained in this section shall apply—

(a) To the dispensing or distribution of any of the aforesaid drugs to a patient by a physician, dentist, or veterinary surgeon registered under this Act in the course of his professional practice only: *Provided*, That such physician, dentist, or veterinary surgeon shall keep a record of all such drugs dispensed or distributed, showing the amount dispensed or distributed, the date, and the name and address of the patient to whom such drugs are dispensed or distributed, except such as may be dispensed or distributed to a patient upon whom such physician, dentist, or veterinary surgeon shall personally attend; and such record shall be kept for a period of two years from the date of dispensing or distributing such drugs, subject to inspection, as provided in this Act.

(b) To the sale, dispensing, or distribution of any of the aforesaid drugs by a dealer to a consumer under and in pursuance of a written prescription issued by a physician, dentist, or veterinary surgeon registered under this Act: *Provided, however*, That such prescription shall be dated as of the date on which signed and shall be signed by the physician, dentist, or veterinary surgeon who shall have issued the same: *And Provided further*, That such dealer shall preserve such prescription for a period of two years from the day on which such prescription is filled in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned.

(c) To the sale, exportation, shipment, or delivery of any of the aforesaid drugs by any person within the United States or any Territory of the District of Columbia or any of the insular possessions of the United States to any person in any foreign country; regulating their entry in accordance with such regulations for importation thereof into such foreign country as are prescribed by said country, such regulations to be promulgated from time to time by the Secretary of State of the United States.

(d) To the sale, barter, exchange, or giving away of any of the aforesaid drugs to any officer of the United States Government or of any State, Territorial, district, county, or municipal or insular government lawfully engaged in making purchases thereof for the various departments of the Army and Navy, the Public Health Service, and for Government, State, Territorial, district, county, or municipal or insular hospitals or prisons.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall cause suitable forms to be prepared for the purposes above mentioned, and shall cause the same to be distributed to col-

lectors of internal revenue for sale by them to those persons who shall have registered and paid the special tax as required by section one of this Act in their districts, respectively; and no collector shall sell any of such forms to any persons other than a person who has registered and paid the special tax as required by section one of this Act in his district. The price of which such forms shall be sold by said collectors shall be fixed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, but shall not exceed the sum of \$1 per hundred. Every collector shall keep an account of the number of such forms sold by him, the names of the purchasers and the number of such forms sold to each of such purchasers. Whenever any collector shall sell any of such forms, he shall cause the name of the purchaser thereof to be plainly written or stamped thereon before delivering the same; and no person other than such purchaser shall use any of said forms bearing the name of such purchaser for the purpose of procuring any of the aforesaid drugs, or furnish any of the forms bearing the name of such purchaser to any person with intent thereby to procure the shipment or delivery of any of the aforesaid drugs. It shall be unlawful for any person to obtain by means of said order forms any of the aforesaid drugs for any purpose other than the use, sale, or distribution thereof by him in the conduct of a lawful business in said drugs or in the legitimate practice of his profession.

The provisions of this Act shall apply to the United States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, the insular possessions of the United States, and the Canal Zone. In Puerto Rico and the Philippine Islands the administration of this Act, the collection of the said special tax, and the issuance of the order forms specified in section two shall be performed by the appropriate internal-revenue officers of those governments, and all revenues collected hereunder in Puerto Rico and the Philippine Islands shall accrue intact to the general governments thereof, respectively. The courts of first instance in the Philippine Islands shall possess and exercise jurisdiction in all cases arising under the Act in said islands. The President is authorized and directed to issue such Executive orders as will carry into effect in the Canal Zone the intent and purpose of this Act by providing for the registration and the imposition of a special tax upon all persons in the Canal Zone who produce, import, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations. The President is further authorized and directed to issue such Executive orders as will permit those persons in the Virgin Islands of the United States lawfully entitled to sell, deal in, dispense, prescribe, and distribute the aforesaid drugs, to obtain said drugs from persons registered under this Act within the continental United States for legitimate medical purposes, without regard to the order forms described in this section.

(a) Regulations

ART. 62. *Written Order Required.*—Except as otherwise provided, order forms are required for all sales or other dispositions of narcotic drugs.

ART. 63. *By Whom Procurable.*—Blank forms may be obtained only by persons who are duly qualified and registered under this Act and have legiti-

mate use thereof. Order forms will not be furnished to persons registered in Class V who are not manufacturers.

ART. 64. *Manner of Procurement.*—A person desiring and entitled to receive order forms should submit requisition on Form 679 to the collector of the district in which he is doing business. The order forms are issued in books each containing 10 original and 10 duplicate forms. Blank requisitions, Form 679, may be obtained from the collector. The requisition shall show the taxpayer's name, address, registry number and class, and the number of books of order forms desired. A charge of 10 cents is made for each book of order forms, and the requisition should be accompanied by remittance of the proper amount in the form of a certified check, cash, or money order.

ART. 65. *Signing of Requisitions.*—Generally requisitions for order forms shall be signed by the same person or persons signing the application for registration (see Art. 8). However, they may be signed by another person authorized by power of attorney previously filed with and approved by the collector. The power of attorney shall be executed in the same manner as applications for registration, shall show the signature of the person thereby authorized to sign requisitions for order forms, and shall affirm that the signature so shown is his signature.

ART. 66. *Signatures to be Compared.*—Upon receipt by the collector of a requisition for order forms the signature on such requisition shall be compared with that appearing on the application for registration or in the power of attorney (see Art. 65). Unless the collector is satisfied that the requisition is authentic it will not be honored.

ART. 67. *Procedure Regarding Order Forms.*—Upon receipt of a properly executed requisition, accompanied by a sum sufficient to cover the cost of the order forms desired, the collector will issue the order forms requested. Before issuing the order forms the collector will cause to be shown thereon in a legible and permanent manner the name, address, registry number, and class number or number of the person to whom they are supplied, also the date of issuance and his signature or his name and the initials of the issuing employee.

(1) Execution of Order Forms.

ART. 69. *Execution of Forms.*—Order forms are issued in duplicate and shall be executed in duplicate. They are arranged to permit the execution of the original and duplicate simultaneously by insertion of a carbon sheet. The original shall not leave the possession of the person executing it until the duplicate is made.

The attachment of extra sheets to order forms is not permitted. If one order form is not sufficient to include all the items of an order, a second form shall be used. The order forms are intended solely to cover disposition of narcotic drugs and preparations to registered persons. They shall not in any case be used as prescriptions.

ART. 70. *Manner of Preparation.*—The order forms shall become a part of the permanent records of the registrant filling them and are required by law to be kept available for inspection for a period of two years. The manufacturer or wholesale dealer should insist for his own protection that the order forms be prepared in such manner as to render their subsequent alteration both difficult of accomplishment and easy of detection. Purchasers also should be careful to protect order forms signed by them against subsequent alteration. Official order forms for the purchase of taxable narcotic drugs should therefore be prepared by the use of typewriter, ink, or indelible pencil, and manufacturers and wholesale dealers should return unfilled any order form executed in a less permanent manner.

ART. 71. *Date.*—The full and exact date when the order form is actually made out shall be inserted by the purchaser. Purchasers are also required to enter, in the space provided therefor at the bottom of the form, the number of items ordered. If in any case the number of items has not been so entered by the purchaser, the order form shall be returned for completion before it is filled.

ART. 72. *Name and Address of Purchaser.*—The name, address, registry and class numbers, and district of the purchaser as inserted by the collector shall not be changed by either the purchaser or consignor in any manner whatsoever. The merchandise requested on the form may be sent only to the person designated by the collector, and at the location specified by him. The name of the purchaser, as registered with the collector, and as entered by the collector on the form, shall be shown on the first line in the lower right-hand space of the form, except where the form is signed personally by an individual registrant in which event this line may be left blank. The signature of an individual purchaser acting personally, or of an individual acting for a registrant, whether acting under power of attorney or otherwise authorized, shall be entered on the second line of the lower right-hand space.

ART. 73. *Signing of Order Forms.*—Official narcotic order forms shall be signed by the purchasing registrant with ink or indelible pencil. The signature shall be in the same form as on the application for registration.

The signing of such forms merely with a firm, corporate or trade name, without indication of personal responsibility, is not permissible, but the signature of the person signing the application for registration must appear. However, they may be signed by another person authorized by power of attorney previously filed with and approved by the collector. The power of attorney shall be executed in the same manner as applications for registration, shall show the signature of the person thereby authorized to sign order forms, and shall affirm that the signature so shown is his signature. The signature of the responsible individual may not be printed or stamped on the order form, but must be shown in his own handwriting.

ART. 74. *Qualifications of Purchaser.*—The purchaser shall at the time the order is submitted be registered under the Act at the location, in the classes and under the registry number specified thereon by the collector, and shall have paid the special taxes necessary to qualify him in such

classes for the fiscal year ending on the following June 30. The purchaser shall likewise be qualified for the fiscal year within which the merchandise is received. Any person executing and presenting for filling an order form who at the time of such presentation is not so registered and has not paid the necessary special taxes will be liable to the penalties provided by law.

ART. 75. *Items.*—Only one item shall be entered on each numbered line and not more than 10 items shall be entered on a single order form. An item shall consist of one or more packages or bottles of the same kind and size; two or more such packages or bottles shall always be regarded as a single item and shall never be counted on the form as two or more items. A separate item shall be made for each article of different description or size. The number of items entered on the form shall be stated by the purchaser in the space provided near the bottom of the form for that purpose. The purchaser shall show with respect to each item the number of stamped packages, the size of each package in terms of pounds, ounces, grains, pills, or tablets (indicating size in case of pills or tablets), if in a solid form, or in terms of gallons, quarts, pints, or ounces, if in liquid form; the name of the article desired, and the name and quantity of the narcotic drug contained in the article if it is not itself a pure narcotic drug. The showing of the catalogue number is optional with the purchaser.

ART. 76. *Dishonored Order Forms.*—Any order form returned because of improper preparation (see Art. 73) must be retained on file with the duplicate thereof and a new form prepared if the articles are still desired.

ART. 77. *Unused Order Forms.*—Where, as to one or more classes, a registrant discontinues business or transfers to a different location in the same or a different district, he shall return for cancellation all unused order forms on which such class number or numbers have been entered by the collector.

(2) Filling of Order Forms.

ART. 78. *Who May Fill.*—Except as hereinafter provided, order forms may be filled only by a registered importer, manufacturer, producer, compounder, or wholesale dealer (a Class I or II registrant).

ART. 79. *Solutions.*—An order form calling for one ounce or less of an aqueous or oleaginous narcotic solution may be filled by a retail dealer under the conditions outlined in Article 15.

ART. 80. *Returned Goods.*—A person registered in any class may return narcotics to the person from whom obtained pursuant to the latter's order form.

ART. 81. *Discontinuance of Business.*—A person discontinuing, or who has discontinued, business in any class may dispose of his narcotics pursuant to order forms, provided he has obtained specific approval from the collector for the district in which the proposed recipient is located to dispose of his narcotic stock to such recipient.

ART. 82. *Filling of Orders.*—The consignor shall enter upon the order form the number and size of the stamped packages furnished on each item and the date when each item is filled. When an order can not be filled in its entirety it may be filled in part and the balance supplied by additional shipments within 30 days from the date of the order form. A notation, covering each shipment, showing the actual quantities supplied and the date of delivery, shall be made by the vendor on the original and by the vendee on the duplicate.

ART. 83. *Alterations.*—No alteration, erasure, or change of any description may be made in any order, or in the endorsement thereon, by any person. The merchandise requested on an order form may not be furnished if the form shows any alteration or erasure, or evidence of any change whatsoever. If an order is not properly prepared in every respect it must be returned to the vendee.

ART. 84. *Acceptance.*—An order is regarded as accepted when notice to that effect is given or, if no notice is given, when the goods are delivered or shipped.

ART. 85. *Unaccepted Orders.*—If an order is not accepted or if, for any reason, one can not be filled, the form shall be returned to the vendee with a letter of explanation. When received by the vendee the returned original and the letter of explanation shall be attached to the duplicate and retained on file.

(3) Filing of Order Forms.

ART. 88. *Filing of Orders.*—The duplicate shall be kept on file by the vendee for at least two years. The original shall be filed and preserved for a like period by the vendor.

Any order form which is improperly executed or mutilated so as to make it unusable, shall not be destroyed, but both, the original and duplicate shall be kept on file with the other duplicates.

ART. 89. *Lost and Stolen Order Forms.*—If a purchaser ascertains that an original unfilled order form has been lost, he shall execute another order in duplicate and an affidavit stating that the goods covered by the first order were not received through loss of the order form, and shall note on the second order the number and date of the lost order and the fact that it was lost. The duplicate of the second order and the affidavit shall be filed with the duplicate of the order form first executed. If the first order form is subsequently received by the person to whom it was directed, he shall mark upon the face thereof, "Not accepted," and return it to the purchaser, who shall attach it to the duplicates and the affidavit.

Whenever any used or unused order forms are stolen from, or lost (otherwise than in the course of transmission) by, any person registered under the Act, he shall immediately upon discovery of such theft or loss, report the same to the Commissioner of Narcotics, Washington, D. C., stating the serial number of each duplicate and original form stolen or lost. If the

theft or loss includes any original orders received from other persons and the registrant is unable to state the serial numbers of such orders, he shall report the date of receipt thereof and the names and addresses of the purchasers. If an entire book of order forms is lost or stolen, and the registrant is unable to state the serial numbers of the order forms contained therein, he shall report the theft or loss to the collector from whom such book was purchased, instead of to the Commissioner of Narcotics, and shall report, in lieu of the numbers of the forms contained in such book, the date or approximate date of purchase thereof. Immediately upon receipt of such report the collector shall transmit it to the Commissioner of Narcotics together with advice from his records (Form 679) as to the serial numbers of the forms contained in such book. If any unused order form reported stolen or lost is subsequently recovered or found, the Commissioner of Narcotics shall be notified thereof.

(4) Exceptions to Use of Order Forms.

ART. 90. *When Not Required.*—The use of order forms is not required:

(1) For dispositions by a duly qualified and registered practitioner in the course of his professional practice only.

(2) For sales or other dispositions pursuant to properly executed prescriptions for legitimate medical purposes.

(3) For unlawful exportations.

(4) For sales or other dispositions to exempt officials.

(5) For the sale, distribution, giving away, dispensing, or possession of preparations and remedies which do not contain more than 2 grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than 1 grain of codeine, or any salt or derivative of any of them in 1 fluid ounce, or, if a solid or semisolid preparation, in 1 avoirdupois ounce; or of liniments, ointments, or other preparations which are prepared for external use only, except liniments, and other preparations which contain cocaine or any of its salts or alpha or beta eucaine or any of their salts or any synthetic substitute for them, provided that such remedies and preparations are manufactured, sold, distributed, given away, dispensed, or possessed as medicines and not for the purpose of evading the intentions and provisions of this Act and that a record of dispositions is kept as required by Article 185.

9. RETAIL DEALERS, PRACTITIONERS, DEALERS IN EXEMPT PREPARATIONS AND LABORATORIES

SECTION 2. * * * Nothing contained in this section shall apply—

(a) To the dispensing or distributing of any of the aforesaid drugs to a patient by a physician, dentist, or veterinary surgeon registered under this Act in the course of his professional practice only: *Provided*, That such physician, dentist, or veterinary surgeon shall keep a record of all such drugs dispensed or distributed, showing the amount dispensed or distributed, the date, and the name and address of the patient to whom such drugs are dispensed or distributed, except such as may be dispensed or distributed to

a patient upon whom such physician, dentist, or veterinary surgeon shall personally attend; and such record shall be kept for a period of two years from the date of dispensing or distributing such drugs, subject to inspection, as provided in this Act.

(b) To the sale, dispensing, or distribution of any of the aforesaid drugs by a dealer to a consumer under and in pursuance of a written prescription issued by a physician, dentist, or veterinary surgeon registered under this Act: *Provided, however,* That such prescription shall be dated as of the day on which signed and shall be signed by the physician, dentist, or veterinary surgeon who shall have issued the same: *and provided further,* That such dealer shall preserve such prescription for a period of two years from the day on which such prescription is filled in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned.

(a) Regulations

ART. 166. *Who May Issue.*—A prescription for narcotic drugs may be issued only by a physician, dentist, veterinary surgeon, or other practitioner who had duly registered, or an exempt official.

ART. 167. *Purpose of Issue.*—A prescription, in order to be effective in legalizing the possession of unstamped narcotic drugs and eliminating the necessity for use of order forms, must be issued for legitimate medical purposes. The responsibility for the proper prescribing and dispensing of narcotic drugs is upon the practitioner, but a corresponding liability rests with the druggist who fills the prescription. An order purporting to be a prescription issued to an addict or habitual user of narcotics, not in the course of professional treatment but for the purpose of providing the user with narcotics sufficient to keep him comfortable by maintaining his customary use, is not a prescription within the meaning and intent of the act; and the person filing such an order, as well as the person issuing it, may be charged with violation of the law.

ART. 168. *Manner of Execution. Practitioners.*—All prescriptions for drugs and preparations not specifically exempt under section 6 of the act (see Articles 180 to 182, incl.) shall be dated as of and signed on the day when issued and shall bear the full name and address of the patient and the name, address, and registry number of the practitioner. A physician may sign a prescription in the same manner as he would sign a check or legal document, as, for instance, J. H. Smith, John H. Smith, or John Henry Smith. Prescriptions should be written with ink or indelible pencil or typewritten; if typewritten, they shall be signed by the practitioner. The duty of properly preparing prescriptions is upon the practitioner, and he is liable to the penalties provided by the act in case of failure to insert the information required by the law. A prescription may be prepared by a secretary or agent for the signature of a practitioner, but the practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the druggist who fills a prescription not prepared in the form prescribed by law.

ART. 169. *Who May Fill.*—A prescription for narcotic drugs may be filled only by a retail dealer registered in Class III, an exempt official, or a member of Class I who is qualified to sell drugs at retail.

ART. 170. *Refilling.*—The refilling of a prescription for taxable narcotics is prohibited.

ART. 171. *Partial Filling.*—As a general rule, the partial filling of narcotic prescriptions is not permissible. If, however, a dealer is unable to supply the full quantity called for in a prescription and an emergency exists, he may supply a portion of the drugs called for by the prescription, provided he makes a suitable notation on the face of the prescription of the quantity furnished and the reason for not supplying the full quantity on the back of the prescription and advises the issuing practitioner thereof. No further quantity shall be supplied except upon a new prescription.

ART. 172. *Telephone Orders.*—The furnishing of narcotics pursuant to telephone advice of practitioners is prohibited, whether prescriptions covering such orders are subsequently received or not, except that in an emergency a druggist may deliver narcotics through his employee or responsible agent pursuant to a telephone order, provided the employee or agent is supplied with a properly prepared prescription before delivery is made, which prescription shall be turned over to the druggist and filed by him as required by law.

ART. 173. *Forms To Be Used.*—The Government does not furnish prescription forms, and the order forms which are supplied must not be used as prescriptions. Any prescription form may be used, provided the required data is shown thereon.

ART. 174. *Filing.*—Dealers who fill prescriptions shall keep them in a separate file in such manner as to be readily accessible to inspection by investigating officers, for not less than two years.

ART. 175. *Labels On Containers.*—The dealer filling a prescription shall affix to the package a label showing his name and registry number, the serial number of the prescription, the name and address of the patient, and the name, address, and registry number of the practitioner issuing the prescription.

10. EXEMPT PREPARATIONS

SEC. 6. That the provisions of this Act shall not be construed to apply to the manufacture, sale, distribution, giving away, dispensing, or possession of preparations and remedies which do not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one fluid ounce, or if solid or semi-solid preparation, in one avoirdupois ounce; or to liniments, ointments, or other preparations which are prepared for external use, only, except liniments, ointments, and other preparations which contain cocaine or any of

its salts or alpha or beta eucaïne or any of their salts or any synthetic substitute for them: *Provided*, That such remedies and preparations are manufactured, sold, distributed, given away, dispensed, or possessed as medicines and not for the purpose of evading the intentions and provisions of this Act: *Provided further*, That any manufacturer, producer, compounder, or vendor (including dispensing physicians) of the preparations and remedies mentioned in this section lawfully entitled to manufacture, produce, compound, or vend such preparations and remedies, shall keep a record of all sales, exchanges, or gifts of such preparations and remedies in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall direct. Such record shall be preserved for a period of two years in such a way as to be readily accessible to inspection by any officer, agent, or employee of the Treasury Department duly authorized for that purpose, and the State, Territorial, District, municipal and insular officers named in section 5 of this Act, and every such person so possessing or disposing of such preparations and remedies, shall register as required in section one of this Act and, if he is not paying a tax under this Act, he shall pay a special tax of \$1 for each year, or fractional part thereof, in which he is engaged in such occupation, to the collector of internal revenue of the district in which he carries on such occupation as provided in this Act. The provisions of this Act as amended shall not apply to decocainized coca leaves or preparations made therefrom, or to other preparations of coca leaves which do not contain cocaine.

(a) Regulations

ART. 180. *Extent of Exemption*.—The section of the law last quoted has the effect of conditionally exempting from liability under the other sections of the act persons manufacturing and dealing in certain narcotic preparations or remedies. Such persons are, however, subject to certain requirements laid down in section 6. Manufacturers of and dealers in exempt preparations are required to register as such whether liable to tax in that capacity or not. (See Art. 13 as to tax liability.)

Preparations containing cocaine or pantopon in any quantity, whether for internal or external use, are not within section 6 but are subject to all provisions of the act.

ART. 181. *Standards of Exemption*.—Preparations designed for or capable of internal use to be exempt shall not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one fluid ounce, or if a solid or semi-solid preparation, in one avoirdupois ounce. The preparation shall contain active medicinal drugs other than narcotics in sufficient proportion to confer upon the preparation valuable medicinal qualities other than those possessed by the narcotic drug alone. Use for aural, nasal, ocular, rectal, urethral, or vaginal purposes is not regarded as external use and, therefore, preparations manufactured or used for such purposes containing more than the percentages of narcotic drugs as above indicated are not within the exemption.

There is no limitation upon the percentage of narcotic drugs external preparations may contain. In order to be within the exemption a preparation for external use, containing more than the maximum percentage of narcotic drugs above specified, shall contain ingredients rendering it unfit for internal administration.

ART. 182. *Restrictions on Dispositions.*—A preparation conforming to the standards set out in Article 181 is exempt from stamp tax and the requirements pertaining to taxable narcotics only when manufactured, sold, distributed, given away, dispensed, or possessed as a medicine. A manufacturer may produce and sell as exempt only preparations readily capable of use for claimed medicinal purposes, and sales thereof, if not to consumers, shall be made only to persons registered in Class V. Sales made to consumers, either by manufacturers or dealers shall be made only in such quantities and with such frequency to the same purchaser as will restrict their use to the medicinal purpose for which intended.

ART. 183. *Dispositions to Dealers.*—Orders for exempt preparations except where sold to a registrant in Class VI are not required to be on any particular forms, but an order from a dealer shall not be honored by a manufacturer or other dealer unless it bears the registry number of the dealer giving the order. (See Articles 100, 105, 111, relative to orders received from the Virgin Islands, Puerto Rico and the Philippine Islands respectively.)

Where orders for exempt preparations are taken by a traveling salesman the salesman shall ascertain the registry number of the purchaser. The order shall not be filled by the manufacturer or vendor unless he knows the purchaser's registry number.

ART. 184. *Dispositions to Consumers.*—Preparations or remedies which are within the exemption may be sold with or without prescriptions, and a prescription for such a preparation may be refilled provided, of course, the preparation is furnished in good faith for medicinal purposes only. The filling or refilling of narcotic prescriptions calling for more than one exempt preparation or a mixture consisting of an exempt preparation or remedy further reduced or diluted by the addition of non-narcotic medicinal agents is authorized, provided, of course, the preparation is furnished in good faith for medicinal purposes.

An extemporaneous prescription calling for narcotic drugs not in excess of the amounts specified in section 6 may be refilled in the same manner as a prescription calling for ready-made preparations or remedies, provided the mixture is sold in good faith for medicinal purposes only, and a record is kept of the sale in the manner indicated in Article 185.

ART. 185. *Records Required.*—Every manufacturer, producer, compounder, or vendor (including dispensing physicians), of exempt preparations shall record all sales, exchanges, gifts, or other dispositions, the entries to be made at the time of delivery. Separate records shall be kept of dispositions to registrants and of dispositions to consumers. The record of dispositions to registrants shall show the name, address, and registry

number of the registrant to whom disposed, the name and quantity of the preparation, and the date upon which delivery to the registrant, his agent or a carrier is made. The record of dispositions to consumers shall show the name of the recipient, his address, the name and quantity of the preparation, and the date of delivery.

Forms are not furnished for the keeping of these records, but the records shall be in the following form:

Form of record of dispositions to registrants

Date	Registration No. of Recipient	Name of Recipient	Address	Name of Preparation	Quantity
.....					
.....					
.....					

Form of record of disposition to consumers

Date	Name of Recipient	Address	Name of Preparation	Quantity
.....				
.....				
.....				

In the case of manufacturers of or dealers in exempt preparations who are also registered as manufacturers of or dealers in taxable drugs in Class I or II, the foregoing requirements as to records of dispositions to registrants shall be deemed to be complied with, if all such dispositions are evidenced by vouchers or invoices containing all the required information and such vouchers or invoices are kept in a separate file arranged chronologically.

As to records required in the case of registrants supplying exempt preparations to consumers pursuant to prescriptions issued by registered physicians, the foregoing requirement as to records of dispositions to consumers shall be deemed to be complied with if each such prescription shows the name and address of the recipient, the name and quantity of the preparation, and the date of filling, and the prescriptions are kept on the narcotic prescription file.

ART. 193. *Safeguarding of Narcotics*.—Narcotic drugs and preparations shall at all times be properly safeguarded and securely kept where they will be available for inspection by properly authorized officers, agents, and employees of the Treasury Department.

ART. 194. *Procedure in Case of Loss*.—Where, through breakage of the container or other accident, otherwise than in transit, narcotics are lost or destroyed, the person having title thereto shall make affidavit as to the

kinds and quantities of narcotics lost or destroyed, and the circumstances involved, and immediately forward the affidavit to the narcotic district supervisor. A copy of such affidavit shall be retained and filed with the other narcotic records. See appendix for list of narcotic district supervisors, their headquarters and States embraced.

When narcotics are lost by theft, or otherwise lost or destroyed in transit, the consignee shall immediately upon ascertainment of the occurrence file with the narcotic district supervisor, a sworn statement of the facts, including a list of the narcotics stolen, lost, or destroyed, and documentary evidence that the local authorities were notified. A copy of the sworn statement shall be retained and filed with the other narcotic records of the consignee.

A loss in transit does not authorize a vendor to duplicate a shipment on the same order form. A separate order form covering each and every shipment of narcotics is required.

ART. 195. *Procedure on Discontinuance of Business.*—Where it is desired to discontinue business the taxpayer shall, before the discontinuance, dispose of all narcotics on hand, and return all unused order forms to the collector for cancellation. Where the discontinuance occurs on any date other than June 30 the taxpayer shall also return the special-tax stamp or stamps to the collector who will mark each such stamp "Business discontinued" with the date, and return the stamp to the taxpayer who shall file it with his narcotic records and retain it for a period of not less than two years. Narcotics on hand may be disposed of either by disposition with the approval of the collector to another registrant or exempt official pursuant to official order forms or orders of purchase, or as provided in Article 196 for disposition of excess and undesired narcotics.

In the case of Class I or II registrants returns for periods subsequent to the date of discontinuance will not be demanded, provided all narcotics have been disposed of and an affidavit is submitted in duplicate to the collector certifying to that effect and that no further transactions of the class for which registration is discontinued will be consummated. The collector will forward one copy of the affidavit to the Commissioner of Narcotics.

ART. 196. *Excess and Undesired Narcotics.*—Excess and undesired narcotics in the possession of a registrant may be disposed of by shipment, charges prepaid (shipments by mail shall not be made), to the narcotic district supervisor of the district. If the person has paid tax in a class under which returns are required to be rendered and the narcotics to be disposed of are a part of the stock for such class, an inventory of the narcotics shipped shall be prepared in quadruplicate on the form used for detailed reporting of dispositions. The original inventory shall be filed with the return for such class for the month in which the disposition takes place, the duplicate copy made a part of the retained copy of the return, the triplicate copy forwarded with the narcotics when shipped for disposition, and the quadruplicate forwarded to the narcotic district supervisor. If the narcotics are held in a class for which returns are not required, an inven-

tory shall be prepared in quadruplicate on Form 142, the triplicate of which shall be forwarded with the narcotics when shipped, the duplicate retained on file by the taxpayer for a period of two years, and the original and quadruplicate forwarded to the narcotic district supervisor.

In any case the shipper shall notify the narcotic district supervisor when the shipment is made, advising of the size and description of the container in which the narcotics are being forwarded, and enclosing the required copy or copies of the inventory. The narcotic district supervisor will forward the original copy of Form 142 to the Commissioner of Narcotics.

Accumulated manufacturing wastes or other excess or undesired narcotics in the possession of registrants may be destroyed by such registrants in the presence of such of the narcotic inspectors or agents as may be specifically authorized by the Commissioner of Narcotics to witness such destruction. Such authorization shall be in writing and signed by the Commissioner. It may be either general, authorizing the inspector or agent to witness such destruction in connection with any inspection or investigation conducted by him, or may be specific, authorizing him to witness such destruction in specified instances. In all cases the terms of the written authorization shall be strictly followed.

ART. 197. *Court Sales.*—Court officers in making sales of narcotics under judicial proceedings shall require the purchaser thereof, who must be a registered person or exempt official, to make out official order forms or purchase orders therefor, the originals to be given to the registrant and the duplicates to be retained by the purchaser.

ART. 198. *Sales of Unclaimed Freight or Express Packages.*—The sale of unclaimed freight or express packages containing narcotics, by officials or railways and express companies, at public auction to unregistered persons, is in violation of the law.

When a sale of such packages is to be made, the narcotic district supervisor shall be notified by the railway or express officials in advance. A narcotic officer will be detailed to inspect all unclaimed packages to be sold and identify such as contain narcotic drugs. He must be present at the time of the sale to see that the packages containing narcotics are sold only to registered persons pursuant to official order forms, or to exempt officials on orders of purchase.

ART. 203. *Specific Penalties.*—Persons who violate the act or fail to fulfill its requirements in any particular are liable to punishment, the maximum liability being to a fine of not more than \$2,000 or imprisonment for not more than 5 years, or both, for each offense. However, attention is invited to the provisions of the Act of August 12, 1937 (U.S.C., Supp. III, title 21, sec. 200), which provides for additional punishment for second, third, and subsequent offenders in certain cases.

CHAPTER II

FEDERAL FOOD, DRUG AND COSMETIC ACT

Introductory Note:

The Federal Food, Drug and Cosmetic Act sets forth as its purpose, "To prohibit the movement in interstate commerce of adulterated and misbranded food, drugs, devices and cosmetics, and for other purposes."

With deletions, some of its important provisions and regulations promulgated pursuant thereto are set forth as follows:

1. DEFINITIONS

SEC. 201. For the purposes of this Act—

(a) The term "Territory" means any Territory or possession of the United States, including the District of Columbia and excluding the Canal Zone.

(b) The term "interstate commerce" means (1) commerce between any State or Territory and any place outside thereof, and (2) commerce within the District of Columbia or within any other Territory not organized with a legislative body.

(c) The term "Agency" means the Federal Security Agency.

(d) The term "Administrator" means the Federal Security Administrator.

(e) The term "person" includes individual, partnership, corporation, and association.

(f) The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles for components of any such article.

(g) The term "drug" means (1) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any articles specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories.

(h) The term "device" (except when used in paragraph (n) of this section and in sections 301 (i), 403 (f), 502 (c), and 602 (c)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; (2) to affect the structure or any function of the body of man or other animals.

(i) The term "cosmetics" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for

use as a component of any such articles; except that such term shall not include soap.

(j) The term "official compendium" means the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

(k) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this Act that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(l) The term "immediate container" does not include package liners.

(m) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.

Regulation (paragraph 2.2) Labeling includes all written, printed, or graphic matter accompanying an article at any time while such article is in interstate commerce or held for sale after shipment or delivery in interstate commerce.

(Sec. 201. For the purposes of this Act—)

(n) If an article is alleged to be misbranded because the labeling is misleading, then in determining whether the labeling is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device or any combinations thereof, but also the extent to which the labeling fails to reveal the facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling relates under the conditions of use prescribed in the labeling thereof or under such conditions of use as are customary or usual.

Regulation. (# 2.3) The existence of a difference of opinion, among experts qualified by scientific training and experience, as to the truth of a representation made or suggested in the labeling is a fact (among other facts) the failure to reveal which may render the labeling misleading, if there is a material weight of opinion contrary to such representation.

(Sec. 201. For the purposes of this Act—)

(o) The representation of a drug in its labeling, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(p) The term "new drug" means—

(1) Any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof, except that such a drug not so recognized shall not be deemed a "new drug" if at

any time prior to the enactment of this Act it was subject to the Food and Drugs Act of June 30, 1906, as amended, and if at such time its labeling contained the same representations concerning the conditions of its use; or

(2) Any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

Regulation. (§ 2.180) Newness of a drug may arise by reason (among other reasons) of—

(1) The newness for drug use of any substance which composes such drug in whole or in part, whether it be an active substance or a menstruum, excipient, carrier, coating, or other component;

(2) the newness for drug use of a combination of two or more substances, none of which is a new drug;

(3) the newness for drug use of the proportion of a substance in a combination, even though such combination containing such substance in other proportion is not a new drug;

(4) the newness of use of such drug in diagnosing, curing, mitigating, treating, or preventing a disease, or to affect a structure or function of the body, even though such drug is not a new drug when used in another disease or to affect another structure or function of the body; or

(5) the newness of a dosage, or method or duration of administration or application, or other condition of use prescribed, recommended, or suggested in the labeling of such drug, even though such drug when used in other dosage, or other method or duration or administration or application, or different condition, is not a new drug.

2. PROHIBITED ACTS AND PENALTIES

SECTION 301. The following acts and the causing thereof are hereby prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, or cosmetic in interstate commerce.

(c) The receipt in interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) The introduction or delivery for introduction into interstate commerce of any article in violation of section 404 or 505.

(e) The refusal to permit access to or copying of any record as required by section 703.

(f) The refusal to permit entry or inspection as authorized by section 704.

(g) The manufacture within any Territory of any food, drug, device, or cosmetic that is adulterated or misbranded.

(h) The giving of a guaranty or undertaking referred to in section 303 (c) (2), which guaranty or undertaking is false, except by a person who relied upon a guaranty or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the food, drug, device, or cosmetic; or the giving of a guaranty or undertaking referred to in section 303 (c) (3), which guaranty or undertaking is false.

Regulation. (# 2.4) In case of the giving of a guaranty or undertaking referred to in section 303 (c) (2) or (3) of the Act, each person signing such guaranty or undertaking shall be considered to have given it.

(Sec. 301. The following acts and the causing thereof are hereby prohibited:)

(i) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of section 404, 406 (b), 504, or 604.

(j) The using by any person to his own advantage, or revealing, other than to the Administrator or officers or employees of the Agency, or to the courts when relevant in any judicial proceeding under this Act, any information acquired under authority of section 404, 505, or 704 concerning any method or process which as a trade secret is entitled to protection.

(k) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device, or cosmetic, if such act is done while such article is held for sale after shipment in interstate commerce and results in such article being misbranded.

(l) The using, on the labeling of any drug or in any advertising relating to such drug, or any representation or suggestion that an application with respect to such drug is effective under section 505, or that such drug complies with the provisions of such section.

3. FOOD

SECTION 401. Whenever in the judgment of the Administrator such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity, a reasonable standard of quality, and/or reasonable standards of fill of container: *Provided*, That no definition and standard of identity and no standard of quality shall be established for fresh or dried fruits, fresh or dried vegetables, or butter, except that definitions and standards of identity may be established for avocados, cantaloupes, citrus fruits, and melons. In prescribing any standard of fill of container, the Administrator shall give due consideration to the natural shrinkage in storage and in transit of fresh natural food and to need for the necessary packing and protective material. In the prescribing of any standard of quality for any canned fruit or canned vegetable, consideration shall be given and due allowance made for the differing characteristics of the

several varieties of such fruit or vegetable. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the Administrator shall, for the purpose of promoting honesty and fair dealing in the interest of consumer, designate the optional ingredients which shall be named on the label. Any definition and standard of identity prescribed by the Administrator for avocados, cantaloupes, citrus fruits, or melons shall relate only to maturity and to the effects of freezing.

(a) Adulterated Food

SECTION 403. A food shall be deemed to be adulterated—

(a) (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under the clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or (2) if it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of section 406; or (3) if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or (4) if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or (5) if it is, in whole or in part, the product of a diseased animal or of an animal which has died otherwise than by slaughter; or (6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(b) (1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(c) If it bears or contains a coal-tar color other than one from a batch that has been certified in accordance with regulations as provided by section 406; *Provided*, That this paragraph shall not apply to citrus fruit bearing or containing a coal-tar color if application for listing of such color has been made under this Act and such application has not been acted on by the Administrator, if such color was commonly used prior to the enactment of this Act for the purpose of coloring citrus fruit.

(d) If it is confectionery, and it bears or contains any alcohol or non-nutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of 1 per centum, natural gum, and pectin: *Provided*, That this paragraph shall not apply to any confectionery by reason of its containing less than one-half of 1 per centum by volume of alcohol derived solely from the use of flavoring extracts, or to

any chewing gum by reason of its containing harmless non-nutritive masticatory substances.

(b) Misbranded Food

SECTION 403. A food shall be deemed to be misbranded—

(a) If its labeling is false or misleading in any particular.

Regulation. (§ 2.7) (a) Among representations in the labeling of a food which render such food misbranded is a false or misleading representation with respect to another food or a drug, device, or cosmetic.

(b) The labeling of a food which contains two or more ingredients may be misleading by reason (among other reasons) of the designation of such food in such labeling by a name which includes or suggests the name of one or more but not all such ingredients, even though the names of all such ingredients are stated elsewhere in the labeling.

(Sec. 403. A food shall be deemed to be misbranded—)

(b) If it is offered for sale under the name of another food.

(c) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence the word "imitation" and, immediately thereafter, the name of the food imitated.

(d) If the container is so made, formed, or filled as to be misleading.

(e) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (2) of this paragraph reasonable variations shall be permitted and exemptions as to small packages shall be established, by regulations prescribed by the Administrator.

Regulation. (§ 2.8) (a) Where food is not manufactured by the person whose name appears on the label, the name shall be qualified by a phrase which reveals the connection such person has with such food, such as "Manufactured for and packed by,," "Distributed by,," or other similar phrase which expresses the facts.

(b) The statement of the place of business shall include the street address, if any, of such place, unless such street address is shown in a current city directory or telephone directory.

(c) Where a person manufactures, packs, or distributes a food at a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where each package of such food was manufactured or packed or is to be distributed, if such statement is not misleading in any particular.

(d) The requirement that the label shall contain the name and place of business of the manufacturer, packer or distributor shall not be considered to relieve any food from the requirement that its label shall not be misleading in any particular.

(e) (1) The statement of the quantity of the contents shall reveal the quantity of food in the package, exclusive of wrappers and other material packed with such food.

(2) The statement shall be expressed in the terms of weight, measure, numerical count, or a combination of numerical count and weight or measure, which are generally used by consumers to express quantity of such food and which give accurate information as to the quantity thereof. But if no general consumer usage in expressing accurate information as to the quantity of such food exists, the statement shall be in terms of liquid measure if the food is liquid, or in terms of weight if the food is solid, semisolid, viscous, or a mixture of solid and liquid; except that such statement may be in terms of dry measure if the food is a fresh fruit, fresh vegetable, or other dry commodity.

- (f) (1) A statement of weight shall be in terms of the avoirdupois pound and ounce. A statement of liquid measure shall be in terms of the United States gallon of 231 cubic inches and quart, pint, and fluid ounce subdivisions thereof, and, except in case of frozen food which is so consumed, shall express the volume at 68° Fahrenheit (20° Centigrade). A statement of dry measure shall be in terms of the United States bushel of 2150.42 cubic inches and peck, dry quart, and dry pint subdivisions thereof; or in terms of the United States standard barrel and its subdivisions of third, half, and three-quarters barrel. However, in the case of an export shipment, the statement may be in terms of a system of weight or measure in common use in the country to which such shipment is exported.

(2) A statement of weight or measure in the terms specified in subdivision (1) of this paragraph may be supplemented by a statement in terms of the metric system of weight or measure.

(3) Unless an unqualified statement of numerical count gives accurate information as to the quantity of food in the package, it shall be supplemented by such statement of weight, measure, or size of the individual units of the food as will give such information.

- (g) Statements shall contain only such fractions as are generally used in expressing the quantity of the food. A common fraction shall be reduced to its lowest terms; and a decimal fraction shall not be carried out to more than two places.

- (h) (1) If the quantity of food in the package equals or exceeds the smallest unit of weight or measure which is specified in paragraph (f) of this regulation, and which is applicable to such food under the provisions of paragraph (e) (2) of this regulation, the statement shall express the number of the largest of such units contained in the package (for example, the statement on the label of a package which contains one quart of food shall be "1 quart," and not "2 pints" or "32 fluid ounces"), unless the statement is made in accordance with the provisions of subdivision (2) of this paragraph. Where such number is a whole number and a fraction, there may be substituted for the fraction its equivalent in smaller units, if any smaller is specified in such paragraph (f) (for examples, 1¾ quarts may be expressed as "1 quart 1½ pints" or "1 quart 1 pint 8 fluid ounces"; 1¼ pounds may be expressed as "1 pound 4 ounces."). The state-

ment of any unit which is smaller than the largest unit (specified in such paragraph (f) (contained in the package) shall not equal or exceed the number of such smaller units in the next larger unit so specified (for examples, instead of "1 quart 16 fluid ounces" the statement shall be "1½ quarts" or "1 quart 1 pint"; instead of "24 ounces" the statement shall be "1½ pounds" or "1 pound 8 ounces").

(2) In the case of a food with respect to which there exists an established custom of stating the quantity of the contents as to a fraction of a unit, which unit is larger than the quantity contained in the package, or as units smaller than the largest unit contained therein, the statement may be made in accordance with such custom if it is informative to consumers.

(i) The statement shall express the minimum quantity, or the average quantity, of the contents of the packages. If the statement is not so qualified as to show definitely that the quantity expressed is the minimum quantity, the statement shall be considered to express the average quantity.

(j) Where the statement expresses the minimum quantity, no variation below the stated minimum shall be permitted except variations below the stated weight or measure caused by ordinary and customary exposure, after the food is introduced into interstate commerce, to conditions which normally occur in good distribution practice and which unavoidably result in decreased weight or measure. Variations above the stated minimum shall not be unreasonably large.

(k) Where the statement does not express the minimum quantity—

(1) Variations from the stated weight or measure shall be permitted when caused by ordinary and customary exposure, after the food is introduced into interstate commerce, to conditions which normally occur in good distribution practice and which unavoidably result in change of weight or measure;

(2) variations from the stated weight, measure or numerical count shall be permitted when caused by unavoidable deviations in weighing, measuring, or counting individual packages which occur in good packing practice.

But under subdivision (2) of this paragraph variations shall not be permitted to such extent that the average of the quantities in the packages comprising a shipment or other delivery of the food is below the quantity stated, and no unreasonable shortage in any package shall be permitted, even though overages in other packages in the same shipment or delivery compensate for such shortage.

(l) The extent of variations from the stated quantity of the contents permissible under paragraphs (j) and (k) of this regulation in the case of each shipment or other delivery shall be determined by the facts in such case.

(m) A food shall be exempt from compliance with the requirements of clause (2) of section 403 (e) of the Act if—

(1) The quantity of the contents, as expressed in terms applicable to such food under the provisions of paragraph (e) (2) of this regulation, is less than one-half ounce avoirdupois, or less than one-half

fluid ounce, or (in case the units of the food can be easily counted without opening the package) less than six units; or

(2) the statement of the quantity of the contents of the package, together with all other words, statements, and information required by or under authority of the Act to appear on the label, cannot, because of insufficient label space, be so placed on the label as to comply with the requirements of section 403 (f) of the Act and regulations promulgated thereunder.

(Sec. 403. A food shall be deemed to be misbranded—)

(f) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Regulation. (§ 2.9) (a) A word, statement, or other information required by or under authority of the Act to appear on the label may lack that prominence and conspicuousness required by section 403 (f) of the Act by reason (among other reasons) of—

- (1) the failure of such word, statement, or information to appear on the part or panel of the label which is presented or displayed under customary conditions of purchase;
- (2) the failure of such word, statement, or information to appear on two or more parts or panels of the label, each of which has sufficient space therefor, and each of which is so designed as to render it likely to be under customary conditions of purchase, the part or panel displayed;
- (3) the failure of the label to extend over the area of the container or package available for such extension, so as to provide sufficient label space for the prominent placing of such word, statement, or information;
- (4) insufficiency of label space, (for the prominent placing of such word, statement, or information) resulting from the use of label space for any word, statement, design, or device which is not required by or under authority of the Act to appear on the label;
- (5) insufficiency of label space (for the prominent placing of such word, statement, or information) resulting from the use of label space to give materially greater conspicuousness to any other word, statement, or information, or to any design or device; or
- (6) smallness or style of type in which such word, statement, or information appears; insufficient background contrast; obscuring designs or vignettes; or crowding with other written, printed, or graphic matter.

(b) No exemption depending on insufficiency of label space, as prescribed in regulations promulgated under section 403 (e) or (i) of the Act, shall apply if such insufficiency is caused by—

- (1) the use of label space for any word, statement, design, or device which is not required by or under authority of the Act to appear on the label;

- (2) the use of label space, to give greater conspicuousness to any word, statement, or other information than is required by section 403 (f) of the Act; or
- (3) the use of label space for any representation in a foreign language.
- (c) (1) All words, statements, and other information required by or under authority of the Act to appear on the label or labeling shall appear thereon in the English language.
- (2) If the label contains any representation in a foreign language, all words, statements, and other information required by or under authority of the Act to appear on the label or labeling shall appear thereon in the foreign language.
- (3) If the labeling contains any representation in a foreign language, all words, statements, and other information required by or under authority of the Act to appear on the label or labeling shall appear on the labeling in the foreign language.

(Section 403. A food shall be deemed to be misbranded—)

(g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by section 401, unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

(h) If it purports to be or is represented as—

- (1) A food for which a standard of quality has been prescribed by regulations as provided by section 401, and its quality falls below such standard, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or
- (2) a food for which a standard or standards of fill of container have been prescribed by regulations as provided by section 401, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

(i) If it is not subject to the provisions of paragraph (g) of this section unless its label bears (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each: *Provided*, That to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable, or results in deception of unfair competition, exemptions shall be established by regulations promulgated by the Administrator.

Regulations. (§ 2.10) (a) The name of an ingredient (except a spice, flavoring, or coloring which is an ingredient of a food other than one sold as a spice, flavoring, or coloring), required by section 403 (i) (2) of the Act to be borne on the label of a food, shall be a specific name and not a collective name. But if an ingredient (which itself contains two or more

ingredients) conforms to a definition and standard of identity prescribed by regulations under section 401 of the Act, such ingredient may be designated on the label of such food by the name specified in the definition and standard, supplemented, in case regulations require the naming of optional ingredients present in such ingredient, by a statement showing optional ingredients which are present in such ingredient.

(b) No ingredient shall be designed on the label as a spice, flavoring, or coloring unless it is a spice, flavoring, or coloring, as the case may be, within the meaning of such term as commonly understood by consumers. The term "coloring" shall not include any bleaching substance.

(c) An ingredient which is both a spice and a coloring or both a flavoring and a coloring, shall be designated as spice and coloring, or flavoring and coloring, as the case may be, unless such ingredient is designated by its specific name.

(d) A label may be misleading by reason (among other reasons) of—

- (1) the order in which the names of ingredient appear thereon, or the relative prominence otherwise given such names; or
- (2) its failure to reveal the proportion of, or other fact with respect to, an ingredient, when such proportion or other fact is material in the light of the representation that such ingredient was used in fabricating the food.

(e) (1) A food shall be exempt from the requirements of clause (2) of section 403 (i) of the Act if all words, statements, and other information required by or under authority of the Act to appear on the label of such food, cannot, because of insufficient label space, be so placed on the label as to comply with the requirements of section 403 (f) of the Act and regulations promulgated thereunder. But such exemptions shall be on the condition that, if the omission from the label of the statement of the quantity of the contents affords sufficient space to state legibly thereon all the information required by such clause (2), such statement of the quantity of the contents shall be omitted as authorized by regulation (m) (2) under section 403 (e) of the Act, and the information required by such clause (2) shall be so stated as prominently as practicable even though the statement is not of such conspicuousness as to render it likely to be read by the ordinary individual under customary conditions of purchase.

(2) In case of an assortment of different items of food, when variations in the items which make up different packages packed from such assortment normally occur in good packing practice, and when such variations result in variations in the ingredients in different packages, such food shall be exempt from compliance with the requirements of clause (2) of section 403 (i) of the Act with respect to any ingredient which is not common to all packages. But such exemption shall be on the condition that the label shall bear, in conjunction with the names of such ingredients as are common to all packages, a statement in terms which are as informative as practicable and which are not misleading, indicating that other ingredients may be present.

(Section 403. A food shall be deemed to be misbranded—)

(j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Administrator determines to be, and by regulations prescribed as, necessary in order fully to inform purchasers as to its value for such uses.

(k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: *Provided*, That to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the Administrator. The provisions of this paragraph and paragraphs (g) and (i) with respect to artificial coloring shall not apply in the case of butter, cheese, or ice cream.

Regulation. (§ 2.11) (a) (1) The term “artificial flavoring” means a flavoring containing any sapid or aromatic constituent, which constituent was manufactured by a process of synthesis or other similar artifice.

(2) The term “artificial coloring” means a coloring containing any dye or pigment, which dye or pigment was manufactured by a process of synthesis or other similar artifice, or a coloring which was manufactured by extracting a natural dye or natural pigment from a plant or other material in which such dye or pigment was naturally produced.

(3) The term “chemical preservative” means any chemical which, when added to food, tends to prevent or retard deterioration thereof; but does not include common salt, sugars, vinegar, spices or oils extracted from spices, or substances added to food by direct exposure thereof to wood smoke.

(b) A food which is subject to the requirements of section 403 (k) of the Act shall bear labeling, even though such food is not in package form.

(c) A statement of artificial flavoring, artificial coloring, or chemical preservative shall be placed on the food, or on its container or wrapper, or on any two or all of these, as may be necessary to render such statement likely to be read by the ordinary individual under customary conditions of purchase and use of such food.

(d) A food shall be exempt from compliance with the requirements of section 403 (k) of the Act if it is not in package form and the units thereof are so small that a statement of artificial flavoring, artificial coloring, or chemical preservative, as the case may be, cannot be placed on such units with such conspicuousness as to render it likely to be read by the ordinary individual under customary conditions of purchase and use.

4. DRUGS AND DEVICES

(a) Adulterated Drugs and Devices

SECTION 501. A drug or device shall be deemed to be adulterated—

(a) (1) If it consists in whole or in part of any filthy, putrid, or decomposed substance; or (2) if it has been prepared, packed, or held under

insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or (3) if it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if it is a drug and it bears or contains, for purposes of coloring only, a coal-tar color other than one from a batch that has been certified in accordance with regulations as provided by section 504.

(b) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, except that whenever tests or methods of assay have not been prescribed in such compendium, or such tests or methods of assay as are prescribed are, in the judgment of the Administrator, insufficient for the making of such determination, the Administrator shall bring such fact to the attention of the appropriate body charged with the revision of such compendium, and if such body fails within a reasonable time to prescribe tests or methods of assay which, in the judgment of the Administrator, are sufficient for purposes of this paragraph, then the Administrator shall promulgate regulations prescribing appropriate tests or methods of assay in accordance with which such determination as to strength, quality, or purity shall be made. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity therefore set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and Homeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

Regulations. (§ 2.001) (a) The name by which a drug is designated shall be clearly distinguishing and differentiating from any name recognized in an official compendium unless such drug complies in identity with the identity prescribed in an official compendium under such recognized name.

(b) The term "drug" defined in an official compendium means a drug having the identity prescribed for a drug in an official compendium.

(c) A statement that a drug defined in an official compendium differs in strength, quality, or purity from the standard of strength, quality, or purity set forth for such drug in an official compendium shall show all the respects in which such drug so differs, and the extent of each such difference.

(Section 501. A drug or device shall be deemed to be adulterated—)

(c) If it is not subject to the provisions of paragraph (b) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

(d) If it is a drug and any substance has been (1) mixed or packed therewith so as to reduce its quality or strength or (2) substituted wholly or in part therefor.

(b) Misbranded Drugs and Devices

SECTION 502. A drug or device shall be deemed to be misbranded—(a) if its labeling is false or misleading in any particular.

Regulation. (# 2.101) (a) Among representations in the labeling of a drug or device which render such drug or device misbranded is a false or misleading representation with respect to another drug or device or a food or cosmetic.

(b) The labeling of a drug which contains two or more ingredients may be misleading by reason (among other reasons) of the designation of such drug in such labeling by a name which includes or suggests the name of one or more but not all such ingredients even though the names of all such ingredients are stated elsewhere in the labeling.

(SECTION 502. A drug or device shall be deemed to be misbranded—)

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by the regulations prescribed by the Administrator.

Regulations. (# 2.012) (a) If a drug or device is not manufactured by the person whose name appears on the label, the name shall be qualified by a phrase, which reveals the connection such person has with such drug or device, such as "Manufactured for and Packed by.....," "Distributed by.....," or other similar phrase which expresses the facts.

(b) The statement of the place of business shall include the street address, if any, of such place, unless such street address is shown in a current city directory or telephone directory.

(c) Where a person manufactures, packs, or distributes a drug or device at a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where each package of such drug or device was manufactured or packed or is to be distributed, if such statement is not misleading in any particular.

(d) The requirement that the label shall contain the name and place of business of the manufacturer, packer, or distributor shall not be considered to relieve any drug or device from the requirement that its label shall not be misleading in any particular.

(e) (1) The statement of the quantity of the contents of a package of a drug shall reveal the quantity of such drug in the package, exclusive of wrappers and other material packed with such drug.

(2) The statement shall be expressed in the terms of weight, measure, numerical count, or a combination of numerical count and weight or measure, which are generally used by consumers and users of such drug to express quantity thereof and which gives accurate information as to which quantity. But if no general usage in expressing accurate information as to the quantity of such drug exists among consumers and users thereof, the statement of the quantity of a drug which is not in tablet, capsule, ampul, or other unit form shall be in terms of weight if the drug is solid, semisolid, or viscous, or in terms of measure if the drug is liquid; the statement of the quantity of a drug which is in such unit form shall be in terms of the numerical count of such units, supplemented, when necessary to give accurate information as to the quantity of such drug in the package, by such statement (in such terms, manner, and form as are not misleading) of the weight or measure of such units, or of the quantity of each active ingredient in each unit, as will give such information.

(3) The statement of the quantity of a device shall be expressed in terms of numerical count.

(f) A statement of weight shall be in terms of the avoirdupois pounds, ounce, and grain, of the kilogram, gram, and milligram. A statement of liquid measure shall be in terms of the United States gallon of 231 cubic inches and quart, pint, fluid ounce, and fluidgram subdivisions thereof, or of the liter, milliter, or cubic centimeter, and shall express the volume at 68° Fahrenheit (20° Centigrade).

(g) Statements of the quantity of a drug shall contain only such fractions as are generally used in expressing the quantity of such drug. A common fraction shall be reduced to its lowest terms; a decimal fraction shall not be carried out to more than three places, except in the case of a statement of the quantity of an active ingredient in a unit of a drug.

(h) (1) Unless made in accordance with the provisions of subdivision (2) of this paragraph, a statement of the quantity of a drug, in the terms of weight or measure applicable to such drug under the provisions of paragraph (e) (2) of this regulation, shall express the number of the largest unit specified in paragraph (f) of this regulation which is contained in the package (for example, the statement on the label of a package which contains one pint of a drug shall be "1 Pint," and not "16 fluid ounces"). Where such number is a whole number and a fraction, there may be substituted for the fraction its equivalent in smaller units, if any smaller is specified in such paragraph (f) (for example, 1¼ pounds may be expressed as "1 pound 4 ounces"). The stated number of any unit which is smaller than the largest unit (specified in such paragraph (f) contained in the package shall not equal or exceed the number of such smaller units in the next larger unit so specified (for example, instead of "1 quart 16 fluid ounces," the statement shall be "1½ quarts" or "1 quart 1 pint").

(2) In the case of a drug with respect to which there exists an established custom of stating of the contents as a fraction of a unit, which unit is larger than the quantity contained in the package, or as units smaller than the largest unit contained therein, the state-

ment may be made in accordance with such custom if it is informative to consumers.

(i) The statement of the quantity of a drug or device shall express the minimum quantity, or the average quantity, of the contents of the packages. If the statement is not so qualified as to show definitely that the quantity expressed is the minimum quantity, the statement, except in the case of ampuls, shall be considered to express the average quantity. The statement of the quantity of a drug in ampuls shall be considered to express the minimum quantity.

(j) Where the statement expresses the minimum quantity, no variation below the stated minimum shall be permitted except variations below the stated weight or measure of a drug caused by ordinary and customary exposure, after such drug is introduced into interstate commerce, to conditions which normally occur in good distribution practice and which unavoidably result in decreased weight or measure. Variations above the stated minimum shall not be unreasonably large. In the case of a liquid drug in ampuls the variation above the stated measure shall comply with the excess volume prescribed by the National Formulary for filling of ampuls.

(k) Where the statement does not express the minimum quantity—

(1) variations from the stated weight or measure of a drug shall be permitted when caused by ordinary and customary exposure, after such drug is introduced into interstate commerce, to conditions which normally occur in good distribution practice and which unavoidably result in change of weight or measure;

(2) variations from the stated weight, measure, or numerical count of a drug or device shall be permitted when caused by unavoidable deviations in weighing, measuring, or counting the contents of individual packages which occur in good packing practices. But under subdivision (2) of this paragraph variations shall not be permitted to such extent that the average of the quantities in the packages comprising a shipment or other delivery of the drug or device is below the quantity stated and no unreasonable shortage in any package shall be permitted, even though overages in other packages in the same shipment or delivery compensate for such shortage.

(l) The extent of variations from the stated quantity under paragraphs (j) and (k) of this regulation in the case of shall be determined by the facts in such case.

(m) A drug or device shall be exempt from compliance with the requirements of clause (2) of section 502(b) of the Act if—

(1) the statement of the quantity of the contents, as expressed in terms applicable to such drug or device under the provisions of paragraph (e) (2) of this regulation, together with all other words, statements, and information required by or under authority of the Act to appear on the label of such drug or device, cannot, because of insufficient label space, be so placed on the labels as to comply with the requirements of section 502(c) of the Act and regulations promulgated thereunder; or

(2) the quantity of the contents of the package, as expressed in terms of numerical count in compliance with paragraph (e) (2) or

(3) of this regulation, is less than six units, and such units can be easily counted without opening the package.

(SECTION 502. A drug or device shall be deemed to be misbranded—)

(c) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Regulation. (§ 2.103) (a) A word, statement, or other information required by or under authority of the Act to appear on the label may lack that prominence and conspicuousness required by section 502(c) of the Act by reason (among other reasons) of—

(1) the failure of such word, statement, or information to appear on the part or panel of the label which is presented or displayed under customary conditions of purchase;

(2) the failure of such word, statement, or information to appear on two or more parts or panels of the label, each of which has sufficient space therefore, and each of which is so designed as to render it likely to be, under customary conditions of purchase, the part or panel displayed;

(3) the failure of the label to extend over the area of the container or package available for such extension, so as to provide sufficient label space for the prominent placing of such word, statement, or information;

(4) insufficient label space (for the prominent placing of such word, statement, or information) resulting from the use of label space for any word, statement, design, or device which is not required by or under authority of the Act to appear on the label;

(5) insufficiency of label space (for the prominent placing of such word, statement, or information) resulting from the use of label space to give materially greater conspicuousness to any other word, statement, or information, or to any design or device, or;

(6) smallness or style of type in which such word, statement, or information appears insufficient background contrast, obscuring designs or vignettes, or crowding with other written, printed, or graphic matter.

(b) No exemption depending on insufficiency of label space, as prescribed in regulations promulgated under section 502(b) or (e) of the Act, shall apply if such insufficiency is caused by—

(1) the use of label space for any word, statement, design, or device which is not required by or under authority of the Act to appear on the label;

(2) the use of label space to give greater conspicuousness to any word, statement, or other information than is required by section 502(c) of the Act; or

(3) the use of label space for any representations in a foreign language.

- (c) (1) All words, statements, and other information required by or under authority of the Act to appear on the label or labeling shall appear thereon in the English language.
- (2) If the label contains any representation in a foreign language, all words, statements, and other information required by or under authority of the Act to appear on the label shall appear thereon in the foreign language.
- (3) If the labeling contains any representation in a foreign language, all words, statements, and other information required by or under authority of the Act to appear on the label or labeling shall appear on the labeling in the foreign language.

(SECTION 502. A drug or device shall be deemed to be misbranded—)

(d) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha eucaïne, barbituric acid, beta-eucaïne, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, mara huana, morphine, opium, paraldehyde, peyote or sulphomethane; or any chemical derivative of such substance, which derivative has been by the Administrator, after investigation, found to be, and by regulations designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

Regulation. (§ 2.104) (a) (1) The name of a substance or derivative required by or under authority of section 502 (d) of the Act to be borne on the label of a drug shall be the name by which such substance is designated in such section 502 (d), or such derivative is designated in regulations promulgated thereunder.

(2) A statement on the label of a drug of the name of a constituent, which constituent is a chemical derivative of a substance named in section 502 (d) of the Act, shall show the substance from which such constituent is derived and that such constituent is a derivative thereof.

(b) If the drug is in tablet, capsule, ampul, or other unit form, the statement of the quantity or proportion of such substance or derivative contained therein shall express the weight or measure of such substance or derivative in each such unit. If the drug is not in such unit form, the statement shall express the weight or measure of such substance or derivative in a specified unit of weight or measure of the drug. Such statement shall be in terms which are informative to the ordinary consumer and user of the drug.

(c) The names, and quantities or proportions of all such substance and derivatives and the statement "Warning—May be habit forming," shall immediately follow (without intervening written, printed, or graphic matter) the name by which such drug is titled in the part or panel of the label thereof which is presented or displayed under customary conditions of purchase.

(d) A drug shall not be considered to be misbranded under section 502 (d) of the Act by reason of failure of its label to bear the statement "Warning—May be habit forming," if such drug is not suitable for internal use

and is distributed and sold exclusively for such external use as involves no possibility of habit formation.

(Section 502. A drug or device shall be deemed to be misbranded—)

(e) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears (1) the common or usual name of the drug, if such there be; and (2), in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, atipyrine, atropine, hyoscyne, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: *Provided*, That to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the Administrator.

Regulation. (§ 2.105) (a) (1) The name of an ingredient, substance, derivative, or preparation required by section 502 (e) (2) of the Act to be borne on the label of a drug if not so listed, shall be a specific name and not a collective name. But if an ingredient is an article the name of which is recognized in an official compendium and such article complies with the specifications set forth therefor in such compendium, such ingredient may be designated on the label of such drug by the common or usual name under which such specifications are set forth.

(2) Where an ingredient contains a substance the quantity or proportion of which is required by section 502 (e) (2) of the Act to appear on the label and such ingredient is not a derivative or preparation of such substance as defined in paragraph (b) (1) of this regulation, the label shall bear, in conjunction with the name of the ingredient, a statement of the quantity or proportion of such substance in such drug.

(3) An abbreviation or chemical formula shall not be considered to be a common or usual name. The name "acetophenetidin" shall be considered to be the same as the name "acetphenetidin," "aminopyrine" the same as "amidopyrine." The name "alcohol," without qualification, means ethyl alcohol.

(b) (1) A derivative or preparation of a substance named in section 502 (e) (2) of the Act is an article which is derived or prepared from such substance by any method, including actual or theoretical chemical action.

(2) A statement on the label of a drug of the name of an ingredient thereof, which ingredient is a derivative or preparation of a substance named in section 502 (e) (2) of the Act, shall show the substance from which such ingredient is derived or prepared and that such ingredient is a derivative or preparation thereof.

- (c) (1) If the drug is in tablet, capsule, ampul, or other unit form, the statement of the quantity or proportion of a substance, derivative, or preparation contained therein shall express the weight or measure of such substance, derivative, or preparation in each such unit. If the drug is not in such unit form the statement shall express the weight or measure of such substance, derivative, or preparation in a specified unit of weight or measure of the drug, or the percentage of such substance, derivative, or preparation in such drug. Such statement shall be in terms which are informative to the ordinary consumer and user of the drug.
- (2) A statement of the percentage of alcohol shall express the percentage of absolute alcohol at 60° Fahrenheit (15.56° Centigrade). A statement of the percentage of a substance, derivative, or preparation other than alcohol shall express the percentage by weight; except that, if both the substances, derivative, or preparation and the drug containing it are liquid, the statement may express the percentage by volume at 68° Fahrenheit (20° Centigrade), but in such case the statement shall be so qualified as to show definitely that the percentage is expressed by volume.
- (d) In case a statement of the quantity or proportion of a derivative or preparation in a drug is not as informative, to consumers or users of such drug, of the activity or consequences of use thereof as a statement of the quantity or proportion of the substance from which such derivative or preparation is derived or prepared, the quantity or proportion of such substance shall also be stated on the label of such drug.
- (e) A label of a drug may be misleading by reason (among other reasons) of—
- (1) the order in which the names of ingredients, substances, derivatives, or preparations appear thereon, or the relative prominence otherwise given such names; or
- (2) its failure to reveal the proportion of, or other fact with respect to, an ingredient, substance, derivative, or preparation, when such proportion or other fact is material in the light of the representation that such ingredient, substance, derivative, or preparation is a constituent of such drug.
- (f) (1) A drug shall be exempt from the requirements of clause (2) of section 502 (e) of the Act if all words, statements, and other information required by or under authority of the Act to appear on the label of such drug, cannot, because of insufficient label space, be so placed on the label as to comply with the requirements of section 502 (c) of the Act and regulations promulgated thereunder. But such exemption shall be on the condition that, if the omission from the label of the statement of the quantity of the contents affords sufficient space to state legibly thereon all the information required by clause (2), such statement of the quantity of the contents shall be omitted as authorized by regulation (m) (1) under section 502 (b) of the Act, and the information required by such clause (2) shall be so stated as prominently as practicable even though the state-

ment is not of such conspicuousness as to render it likely to be read by the ordinary individual under customary conditions of purchase.

- (2) A drug shall be exempt from the requirements of clause (2) of section 502 (e) of the Act with respect to the alkaloids atropine, hyoscine or hyoscyamine contained in such drug, if such alkaloid is contained therein as a constituent of *bella donna*, *hyoscyamus*, *acopola*, *stramonium*, or other plant material, or any preparation thereof, which was used as an ingredient of such drug, and no practical and accurate method of analysis exists for the quantitative determination of each such alkaloid in such ingredient. But such exemption shall be on the condition that the label of such drug shall state the quantity or proportion of total alkaloids contained therein as constituents of such ingredient.

(Section 502. A drug or device shall be deemed to be misbranded—)

(f) Unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users: *Provided*, That where any requirement of clause (1) of this paragraph, as applied to any drug or device, is not necessary for the protection of the public health, the Administrator shall promulgate regulations exempting such drug or device from such requirement.

Regulation. (# 2.106) (a) Directions for use may be inadequate by reason (among other reasons) of omissions, in whole or in part, or incorrect specification of—

- (1) directions for use in all conditions for which such drug or device is prescribed, recommended, or suggested in its labeling, or in its advertising disseminated or sponsored by or on behalf of its manufacturer or packer, or in such other conditions, if any there be, for which such drug or device is commonly and effectively used;
 - (2) quantity of dose (including quantities for persons of different ages and different physical conditions);
 - (3) frequency of administration or application;
 - (4) duration of administration or application;
 - (5) time of administration or application (in relation to time of meals, time of onset or symptoms, or other time factor);
 - (6) route or method of administration or application; or
 - (7) preparation for use (shaking, dilution, adjustment of temperature, or other manipulation or process).
- (b) A shipment or other delivery of a drug or device shall be exempt from compliance with the requirements of clause (1) of section 502 (f) of the Act if—
- (1) such shipment or delivery is made for use exclusively by or on the prescription of physicians, dentists, or veterinarians licensed by law to administer or apply such drug or device;

- (2) adequate directions for so using such drug or device are available in scientific publications or otherwise;
- (3) the label of such drug or device bears the statement "Caution: To be used only by or on the prescription of a" or "Caution: To be used only by a, " the blank to be filled in by the word "physician," "dentist," or "veterinarian," or any combination of two or all such words, as the case may be;
- (4) no representation appears in the labeling of such drug or device with respect to the conditions for which it is to be used; and
- (5) in the case of a drug which is not designated solely by a name recognized in an official compendium and which is fabricated from two or more ingredients, its label also bears the quantity or proportion of each active ingredient.

Such exemption shall remain valid until all of such shipment or delivery is used by physicians, dentists, or veterinarians licensed by law to administer or apply such drug or device, or is dispensed upon, and under labels bearing the directions for use specified in, prescriptions of such physicians, dentists, or veterinarians. But if such shipment or delivery, or any part thereof, is otherwise disposed of as a drug or device, such exemption shall thereupon expire. The causing by any person of such an exemption so to expire shall be considered to be an act of misbranding for which such person shall be liable unless, prior to such disposition, such drug or device is relabeled to comply with clause (1) of section 502 (f) of the Act.

(c) A shipment or other delivery of a drug or device shall also be exempt from compliance with the requirements of clause (1) of section 502 (f) of the act—

- (1) with respect to directions for common uses, adequate directions for which are known by the ordinary individual; or
- (2) if the label of such drug or device bears the statement "for manufacturing use only," and the labeling thereof contains no representation with respect to the effect of such drug or device; and if such shipment or delivery is made for use exclusively in the manufacture of another drug or device.

But an exemption under clause (2) of this paragraph shall expire if such shipment or delivery, or any part thereof, is otherwise disposed of as a drug or device. The causing by any person of such an exemption so to expire shall be considered to be an act of misbranding for which such person shall be liable unless, prior to such disposition, such drug or device is relabeled to comply with clause (1) of section 502 (f) of the Act.

(Section 502. A drug or device shall be deemed to be misbranded—)

(g) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: *Provided*, That the method of packing may be modified with the consent of the Administrator. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to

the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(h) If it has been found by the Administrator to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the Administrator shall by regulations require as necessary for the protection of the public health. No such regulation shall be established for any drug recognized in an official compendium until the Administrator shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(i) (1) If it is a drug and its container is made, formed, or filled as to be misleading; or (2) if its imitation of another drug; or (3) if it is offered for sale under the name of another drug.

(j) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

(c) New Drugs

SECTION 505. (a) No person shall introduce or deliver for introduction into interstate commerce any new drug, unless an application filed pursuant to subsection (b) is effective with respect to such drug.

Regulation. (# 2.109) A new drug shall not be deemed to be subject to section 505 of the Act if it is a drug which is licensed under the Virus, Serum, and Toxin Act of July 1, 1902 (U.S.C., 1934 ed., title 42, ch. 4), or the Virus, Serums, Toxins, Antitoxins and Analogous Products Act of March 4, 1913 (U.S.C., 1934 ed., title 21, ch. 5.).

(Section 505) (b) Any person may file with the Administrator an application with respect to any drug subject to the provisions of subsection (a). Such person shall submit to the Administrator as a part of the application (1) full reports of investigations which have been made to show whether or not such drug is safe for use; (2) a full list of the articles used as components of such drug; (3) a full statement of the composition of such drug; (4) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (5) such samples of such drug and of the articles used as components thereof as the Administrator may require; and (6) specimens of the labeling proposed to be used for such drug.

Regulation. (# 2.110) (a) Each application submitted for filing with the Administrator shall be in duplicate. If any part of the application is in foreign language, an accurate and complete English translation shall be appended to such part.

(b) An application, only one copy of which is submitted, or which on its face is incomplete in that it does not contain all the matter required by clauses (1), (2), (3), (4), and (6) of section 505 (b) of the Act, shall not be accepted for filing. The Food and Drug Administration shall notify the

applicant of such non-acceptance and the reason therefor and, in case of incompleteness, shall specify the clauses in respect of which such application is received by the Agency shall be considered to the date on which such application is filed, and the Food and Drug Administration shall notify the applicant of such date. If the applicant withdraws his application, such application shall be considered as not having been filed.

(c) The applicant may file an amendment to an application which has been filed and is pending before the Administrator, but in such case the unamended application shall be considered as having been withdrawn and the amended application shall be considered as having been filed on the date on which the amendment is received by the Agency. The Food and Drug Administration shall notify the applicant of such date.

(Sec. 505) (c) An application provided for in subsection (b) shall become effective on the sixtieth day after the filing thereof unless prior to such day the Administrator by notice to the applicant in writing postpones the effective date of the application to such time (not more than one hundred and eighty days after the filing thereof) as the Administrator deems necessary to enable him to study and investigate the application.

Regulation. (# 2.110) (d) If the Administrator determines, before the date prescribed by section 505 (c) of the Act for an application to become effective, that he has no cause to issue an order under section 505 (d) of the Act refusing to permit such application to become effective, the Food and Drug Administration shall so notify the applicant in writing and such application shall become effective on the date of the notification.

(Sec. 505) (d) If the Administrator finds, after due notice to the applicant and giving him an opportunity for a hearing, that (1) the investigations, reports of which are required to be submitted to the Administrator pursuant to subsection (b), do not include adequate tests by all methods reasonably applicable to show whether or not such drug is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof; (2) the results of such tests show that such drug is unsafe for use under such conditions or do not show that such drug is safe for use under such conditions; (3) the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug are inadequate to preserve its identity, strength, quality, and purity; or (4) upon the basis of the information submitted to him as part of the application, or upon the basis of any other information before him with respect to such drug, he has insufficient information to determine whether such drug is safe for use under such conditions, he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(e) The effectiveness of an application with respect to any drug shall, after due notice and opportunity for hearing to the applicant, by order of the Administrator be suspended if the Administrator finds (1) that clinical experience, tests by new methods, or tests by methods not deemed reasonably applicable when such application became effective show that such drug is unsafe for use under the conditions of use upon the basis of which the

application became effective, or (2) that the application contains any untrue statement of a material fact. The order shall state the findings upon which it is based.

(f) An order refusing to permit an application with respect to any drug to become effective shall be revoked whenever the Administrator finds that the facts so require.

(g) Orders of the Administrator issued under this section shall be served (1) in person by any officer or employee of the Agency designated by the Administrator or (2) by mailing the order by registered mail addressed to the applicant or respondent at his last-known address in the records of the Administrator.

(h) An appeal may be taken by the applicant from an order of the Administrator refusing to permit the application to become effective, or suspending the effectiveness of the application. Such appeal shall be taken in filing in the district court of the United States within any district wherein such applicant resides or has his principal place of business, or in the District Court of the United States for the District of Columbia, within sixty days after the entry of such order, a written petition praying that the order of the Administrator be set aside. A copy of such petition shall be forthwith served upon the Administrator, or upon any officer designated by him for that purpose, and thereupon the Administrator shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon filing of such transcript such court shall have exclusive jurisdiction to affirm or set aside such order. No objection to the order of the Administrator shall be considered by the court unless such objection shall have been urged before the Administrator or unless there were reasonable grounds for failure so to do. The finding of the Administrator as to the facts, if supported by substantial evidence, shall be conclusive. If any person shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence to be taken before the Administrator and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Administrator may modify his findings as to the facts by reason of the additional evidence so taken, and he shall file with the court such modified findings which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the setting aside of the original order. The judgment and decree of the court affirming or setting aside any such order of the Administrator shall be final, subject to review as provided in sections 128, 239, and 240 of the Judicial Code, as amended (U.S.C., 1934 ed., title 28, secs. 225, 346, and 347) and section 7, as amended, of the act entitled "An Act to establish a Court of Appeals for the District of Columbia," approved February 9, 1893 (D. C. Code, title 18, sec. 26). The commencement of proceedings under this subsection shall not, unless specifically ordered by the court to the contrary, operate as a stay of the Administrator's order.

(i) The Administrator shall promulgate regulations for exempting from the operation of this section drugs intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs.

Regulation. (# 2.111) (a) A shipment or other delivery of a new drug shall be exempt from the operation of section 505 (a) of the Act if all of the following requirements are complied with:

- (1) The label of such drug shall bear the statement "Caution: New Drug—Limited by Federal Law to investigational use."
 - (2) Such shipment or delivery shall be made only to, and solely for investigational use by or under the direction of, an expert qualified by scientific training and experience to investigate the safety of such drug.
 - (3) The person who introduced such shipment or delivery into interstate commerce shall keep complete records showing the date and quantity of each such shipment and delivery.
 - (4) Such person, prior to making such shipment or delivery, shall obtain a statement signed by such expert showing he has adequate facilities for the investigation to be conducted by him, and that such drug will be used solely by him or under his direction for the investigation, unless and until an application becomes effective with respect to such drug under section 505 of the Act. Such person shall keep such statement.
 - (5) Such person shall make all documents referred to in (3) and (4) of this paragraph available for inspection upon the request of any officer or employee of the Agency at any reasonable hour until three years after the introduction of such shipment or delivery into interstate commerce.
- (b) An exemption of a shipment or other delivery of a new drug under paragraph (a) of this regulation shall become void ab initio if—
- (1) the person who introduced such shipment or delivery into interstate commerce fails to keep any document required to be kept by such paragraph; or
 - (2) such person fails to make any such document available for inspection as required by such paragraph.
- (c) An exemption of a shipment or other delivery of a new drug under paragraph (a) of this regulation shall expire upon the use of any part of such shipment or delivery other than in accordance with the signed statement referred to in (4) of such paragraph.

5. COSMETICS

(a) Adulterated Cosmetics

SECTION 601. A cosmetic shall be deemed to be adulterated—

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions prescribed in the labeling thereof, or under such conditions of use as are customary or usual: *Provided*, That this provision shall not apply to coal-tar hair dye, the label

of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows, to do so may cause blindness," and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this paragraph and paragraph (e) the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

Regulation. (# 2.200) The term "coal-tar hair dye" includes all articles containing coal-tar color or intermediate which color or intermediate alters the color of the hair when such articles are applied to the hair under the conditions or use prescribed in the labeling thereof, or under such conditions of use as are customary or usual.

(SEC. 601. A cosmetic shall be deemed to be adulterated.—)

(b) If it consists in whole or part of any filthy, putrid, or decomposed substance.

(c) If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(d) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(e) If it is not a hair dye and it bears or contains a coal-tar color other than one from a batch that has been certified in accordance with regulations as provided by section 604.

(b) Misbranded Cosmetics

SEC. 602. A cosmetic shall be deemed to be misbranded—

(a) If its labeling is false or misleading in any particular.

Regulation. (# 2.201) (a) Among representations in the labeling of a cosmetic which render such cosmetic misbranded is a false or misleading representation with respect to another cosmetic or a food, drug, or device.

(b) The labeling of a cosmetic which contains two or more ingredients may be misleading by reason (among other reasons) of the designation of such cosmetic in such labeling by a name which includes or suggests the name of one or more but not all such ingredients, even though the names of all such ingredients are stated elsewhere in the labeling.

(SEC. 602. A cosmetic shall be deemed to be misbranded—)

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Administrator.

Regulation. (# 2.202) (a) If a cosmetic is not manufactured by the person whose name appears on the label, the name shall be qualified by a

phrase which reveals the connection such person has with such cosmetic, such as "Manufactured for and Packed by.....," "Distributed by.....," or other similar phrase which expresses the facts.

(b) The statement of the place of business shall include the street address, if any, of such place, unless such street address is shown in a current city directory or telephone directory.

(c) Where a person manufactures, packs, or distributes a cosmetic at a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where each package of such cosmetic was manufactured or packed or is to be distributed, if such statement is not misleading in any particular.

(d) The requirement that the label shall contain the name and place of business of the manufacturer, packer, or distributor shall not be considered to relieve any cosmetic from the requirement that its label shall not be misleading in any particular.

(e) (1) The statement of the quantity of the contents shall reveal the quantity of cosmetic in each package, exclusive of wrappers and other material packed with such cosmetic.

(2) The statement shall be expressed in terms of weight, measure, numerical count, or a combination of numerical count and weight or measure, which are generally used by consumers to express quantity of such cosmetic and which give accurate information as to the quantity thereof. But if no general consumer usage in expressing accurate information as to the quantity of such cosmetic exists, the statement shall be in terms of liquid measure if the cosmetic is liquid, or in terms of weight if the cosmetic is solid, semisolid, or viscous, or in such terms of numerical count, or numerical count and weight or measure as will give accurate information as to the quantity of the cosmetic in the package.

(f) (1) A statement of weight shall be in terms of the avoirdupois pound and ounce. A statement of liquid measure shall be in terms of the United States gallon of 231 cubic inches and quart, pint, and fluid ounce subdivisions thereof, and shall express the volume at 68° Fahrenheit (20° Centigrade). However, in the case of an export shipment, the statement may be in terms of a system of weight or measure in common use in the country to which such shipment is exported.

(2) A statement of weight or measure in the terms specified by subdivision (1) of this paragraph may be supplemented by a statement in terms of the metric system of weight or measure.

(3) Unless an unqualified statement of numerical count gives accurate information as to the quality of cosmetic in the package, it shall be supplemented by such statement of weight, measure, or size of the individual units of the cosmetic as will give such information.

(g) Statements shall contain only such fractions as are generally used in expressing the quantity of the cosmetic. A common fraction shall be reduced to its lowest terms; a decimal fraction shall not be carried out to more than two places.

(h) (1) If the quantity of cosmetic in the package equals or exceeds the smallest unit of weight or measure which is specified in paragraph (f) of this regulation, and which is applicable to such cosmetic under the provisions of paragraph (e) (2) of this regulation, the statement shall express the number of the largest of such units contained in the package (for example, the statement on the label of a package which contains one pint of cosmetic shall be "1 pint" and not "16 fluid ounces"), unless the statement is made in accordance with the provisions of subdivision (2) of this paragraph. Where such number is a whole number and a fraction, there may be substituted for the fraction its equivalent in smaller units, if any smaller is specified in such paragraph (f) for examples, $1\frac{3}{4}$ quarts may be expressed as "1 quart $1\frac{1}{2}$ pints," or "1 quart 1 pint 8 fluid ounces"; $1\frac{1}{4}$ quarts may be expressed as "1 pound 4 ounces". The stated number of any unit which is smaller than the largest unit (specified in such paragraph (f) contained in the package shall not equal or exceed the number of such smaller units in the next larger unit so specified (for examples, instead of "1 quart 16 fluid ounces" the statement shall be " $1\frac{1}{2}$ quarts" or "1 quart 1 pint"; instead of "24 fluid ounces" the statement shall be " $1\frac{1}{2}$ quarts" or "1 pound 8 ounces").

(2) In the case of a cosmetic with respect to which there exists an established custom of stating the quantity of the contents as a fraction of a unit, which unit is larger than the quantity contained in the package, or as units smaller than the largest unit contained therein, the statement may be made in accordance with such custom if it is informative to consumers.

(i) The statement shall express the minimum quantity, or the average quantity, of the contents of the packages. If the statement is not so qualified as to show definitely that the quantity expressed is the minimum quantity, the statement shall be considered to express the average quantity.

(j) Where a statement expresses the minimum quantity, no variation below the stated minimum shall be permitted except variations below the stated weight or measure caused by ordinary and customary exposure, after the cosmetic is introduced into interstate commerce, to conditions which normally occur in good distribution practice and which unavoidably result in decreased weight or measure. Variations above the stated minimum shall not be unreasonably large.

(k) Where the statement does not express the minimum quantity—

(1) Variations from the stated weight or measure shall be permitted when caused by ordinary and customary exposure, after the cosmetic is introduced into interstate commerce, to conditions which normally occur in good distribution practice and which unavoidably result in change of weight or measure;

(2) variations from the stated weight, measure, or numerical count shall be permitted when caused by unavoidable deviations in weighing, measuring, or counting individual packages which occur in good packing practice.

But under subdivision (2) of this paragraph variations shall not be permitted to such extent that the average of the quantities in the

packages comprising a shipment or other delivery of the cosmetic is below the quantity stated, and no unreasonable shortage in any package shall be permitted, even though overages in other packages in the same shipment or delivery compensate for such shortage.

(l) The extent of variations from the stated quantity of the contents permissible under paragraphs (j) and (k) of this regulation in the case of each shipment or other delivery shall be determined by the facts in such case.

(m) A cosmetic shall be exempt from compliance with the requirements of clause (2) of section 602 (b) of the Act if the quantity of the contents of the package, as expressed in terms applicable to such cosmetic under the provisions of paragraph (e) (2) of this regulation, is less than one-fourth ounce avoirdupois, or less than one-eighth ounce, or (in case the units of the cosmetic can be easily counted without opening the package) less than six units.

(Sec. 602. A cosmetic shall be deemed to be misbranded—)

(c) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Regulation. (# 2.203) (a) A word, statement, or other information required by or under authority of the Act to appear on the label may lack that prominence and conspicuousness required by Section 602 (c) of the Act by reason (among other reasons) of—

(1) the failure of such word, statement, or information to appear on the part or panel of the label which is presented or displayed under customary conditions of purchase;

(2) the failure of such word, statement, or information to appear on two or more parts or panels of the label, each of which has sufficient space therefor, and each of which is so designed as to render it likely to be, under customary conditions of purchase, the part or panel displayed;

(3) the failure of the label to extend over the area of the container or package available for such extension, so as to provide sufficient label space for the prominent placing of such word, statement, or information;

(4) insufficiency of label space (for the prominent placing of such word, statement, or information) resulting from the use of label space for any word, statement, design, or device which is not required by or under authority of the Act to appear on the label;

(5) insufficiency of label space (for the prominent placing of such word, statement, or information) resulting from the use of label space to give materially greater conspicuousness to any other word, statement, or information, or to any design, or device; or

(6) smallness or style of type in which such word, statement, or information appears, insufficient background contrast, obscuring de-

signs or vignettes, or crowding with other written, printed, or graphic matter.

(b) (1) All words, statements, and other information required by or under authority of the Act to appear on the label or labeling shall appear thereon in the English language.

(2) If the label contains any representation in a foreign language, all words, statements, and other information required by or under authority of the Act to appear on the label shall appear thereon in the foreign language.

(3) If the labeling contains any representation in a foreign language, all words, statements, and other information required by or under authority of the Act to appear on the label or labeling shall appear on the labeling in the foreign language.

(Section. 602. A cosmetic shall be deemed to be misbranded—)

(d) If its container is so made, formed, or filled as to be misleading.

PART THREE
APPENDIX

APPENDIX

3RULES FOR THE GOVERNMENT OF THE NORTH CAROLINA BOARD OF PHARMACY

As Amended November 15, 1932

To be effective from June 1, 1933

Examinations shall be plainly written and divided under five heads, namely:

1. Materia Medica, Posology and Toxicology, with identification of vegetable and animal drugs.
2. Theoretical Pharmacy.
3. Practical Pharmacy, including laboratory work, prescription criticism and reading, with identification of galenicals.
4. Pharmaceutical Chemistry, with identification of chemicals.
5. Pharmaceutical and Chemical Problems.

Written questions shall be arranged as nearly as practicable into ten main questions under each head, with sub-questions.

For the purpose of grading or rating, answers to questions shall be valued by marks or points based on their importance, as determined by the judgment of the examiner.

A general average of seventy-five per cent with not less than sixty per cent on any branch, except Practical Pharmacy, wherein not less than seventy-five per cent shall be required to pass.

Applicants making a general average of seventy-five per cent in the written examinations, but failing to make seventy-five per cent in the practical, must re-take and pass the latter before license will be granted.

No application for registration, license or permit shall be considered, unless made out and duly sworn to upon the official form of the Board, and accompanied by the required fee.

4INSTRUCTIONS AND TERMS FOR RECIPROCAL LICENSURE

Eligibility for reciprocal licensure in all States is contingent upon the applicant's qualifications at the time of licensure by examination in the State from which he applies. Detailed information about education, training and apprenticeship prior to original licensure by examination as well as record of practice and licensure acquired since is essential information which must be fully and accurately presented in the application for determination of eligibility. Applicant must, therefore, make accurate entries in all spaces or indicate "none."

MAIL COMPLETED APPLICATION WITH FEE OF \$35.00 TO NATIONAL ASSOCIATION OF BOARDS OF PHARMACY, P. H. COSTELLO, SECRETARY, 77 WEST WASHINGTON STREET, CHICAGO 2, ILLINOIS.

If information furnished discloses that applicant is ineligible for the reciprocal licensure applied for, fee will be returned with an explanation of the ineligibility.

If information furnished discloses that applicant is eligible for the reciprocal licensure applied for, regulation forms with complete instructions for executing and filing same will be furnished to the applicant promptly. Instructions issued must be followed and form completed and filed with the recipient Board of Pharmacy within ninety days from date of issue. Thereafter, and within one year from date of issue, application may be returned for an endorsement to extend time of use or to permit its use in some other State, the fee for either privilege being \$5.00. **Applications which are not completed and filed within one year from date of issue are null and void and are subject to no refund whatever.**

If an applicant follows instructions, completes and files the regulation form as specified and presents himself to recipient Board of Pharmacy but is denied reciprocal licensure, a refund of \$30.00 will be made upon receipt of rejection notice and request made by applicant within sixty days after rejection or denial of licensure.

If a Pharmacist does not desire reciprocal licensure immediately but wishes to ascertain if he is eligible, he may obtain that information without cost by completing and submitting the application without fee but labeled "for opinion only."

Secure Preliminary Application from the Secretary of your state Board of Pharmacy or from the National Association of Boards of Pharmacy.

EXAMINATION RULES

Candidates must not communicate in any way with another; nor give, receive or use any means of information.

Questions to examiners must be asked without moving from seat and loud enough for all to hear.

Answer the questions by number, and where there are sub-divisions start each on new line. Proportionate credit will be allowed for partial answers.

Incorrect spelling or grammar and bad handwriting will detract from final rating.

Three hours' time allotted in which to complete this examination.

AMENDED EXAMINATION RULE

Effective from June 1, 1933

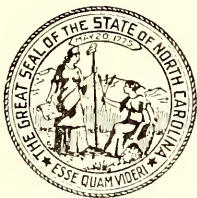
A general average of 75%, with not less than 60% in any branch, except practical pharmacy wherein not less than 75% shall be required to pass.

Applicants making a general average of 75% in the written examination, but failing to make 75% in the practical, must re-take and pass the latter before license will be granted.

PHARMACY LAWS OF NORTH CAROLINA

Rules and Regulations of

North Carolina Board of Pharmacy



September 1, 1953

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Pharmacy Laws of North Carolina

§ 90-53. **North Carolina pharmaceutical association**—The North Carolina pharmaceutical association, and the persons composing the same, shall continue to be a body politic and corporate under the name and style of the North Carolina Pharmaceutical Association, and by said name have the right to sue and be sued, to plead and be impleaded, to purchase and hold real estate and grant the same, to have and to use a common seal, and to do such other things and perform such other acts as appertain to bodies corporate and politic not inconsistent with the constitution and laws of the state. (Rev., s. 4471; Code, s. 3135; 1881, c. 355, s. 1; C. S. 6650.)

§ 90-54. **Object of pharmaceutical association**—The object of the association is to unite the pharmacists and druggists of this state for mutual aid, encouragement, and improvement; to encourage scientific research, develop pharmaceutical talent, to elevate the standard of professional thought, and ultimately restrict the practice of pharmacy to properly qualified druggists and apothecaries. (Rev., s. 4472; Code, s. 3136; 1881, c. 355, s. 2; C. S. 6651.)

§ 90-55. **Board of pharmacy; election; terms; vacancies**—The board of pharmacy shall consist of five persons licensed as pharmacists within this state, who shall be elected and commissioned by the governor as hereinafter provided. The members of the present board of pharmacy shall continue in office until the expiration of their respective terms, and the rules, regulations, and by-laws of said board, so far as they are not inconsistent with the provisions of this article, shall continue in effect. The North Carolina pharmaceutical association shall annually elect a resident pharmacist from its number to fill the vacancy annually occurring in said board, and the pharmacist so elected shall be commissioned by the governor and shall hold office for the term of five years and until his successor has been duly elected and qualified. In case of death, resignation, or removal from the state of any member of said board of pharmacy, the said board shall elect in his place

a pharmacist who is a member of said North Carolina pharmaceutical association, and shall be commissioned by the governor as a member of the said board of pharmacy for the remainder of the term. It shall be the duty of a member of the board of pharmacy within ten days after receipt of notification of his appointment and commission, to appear before the clerk of the superior court of the county in which he resides and to take and subscribe an oath to properly and faithfully discharge the duties of his office according to law. (Rev., s. 4473; 1903, c. 108, ss. 5-7; C. S. 6652.)

§ 90-56. **Election of officers; bonds; annual meetings**—The board of pharmacy shall elect two officers, a president and a secretary-treasurer, who shall hold their offices until their successors shall have been elected and qualified. The president shall be elected from the membership of the board. The Secretary-Treasurer may or may not be a member of the board, as the board shall determine. The secretary-treasurer shall give bond in such sum as may be prescribed by the board, conditioned for the faithful discharge of the duties of his office according to law, and said bond shall be made payable to the North Carolina board of pharmacy and approved by said board. The said board shall hold an annual meeting at such time and place as it may provide by rule for the examination of candidates and for the discharge of such other business as may legally come before it, and said board may hold such additional meetings as may be necessary for the examination of candidates and for the discharge of any other business. (Rev., s. 4474; 1903, c. 108, s. 8; 1923, c. 82; C. S. 6653.)

§ 90-57. **Powers of board; reports; journal; records**—The board of pharmacy shall have a common seal, and shall have the power and authority to define and designate noxious and poisonous domestic remedies, to adopt such rules, regulations, and by-laws, not inconsistent with this article, as may be necessary for the regulation of its proceedings and for the discharge of the duties imposed under this article, and shall have power to

authority to employ inspectors, chemists, and attorney to conduct prosecutions and to assist in the conduct of prosecutions under this article, and for any other purposes which said board may deem necessary. The board of pharmacy shall keep a record of its proceedings and a register of all persons to whom certificates of license as pharmacists and permits have been issued, and all renewals thereof; and the books and register of the said board, or a copy of any thereof, certified by the secretary, attested by the seal of said board, shall be used in and accepted as competent evidence in all the courts of the state. The said board of pharmacy shall make annually to the governor and to the North Carolina Pharmaceutical association written reports of its proceedings and of its receipts and disbursements under this article, and of all persons licensed to practice as pharmacists in this state. A majority of the board shall constitute a quorum for the transaction of business. (Rev., s. 4475; 1905, c. 108, s. 1; 1907, c. 113, s. 1; C. S. 6654.)

§ 90-58. Compensation of secretary and members.—The secretary of the board of pharmacy shall receive such salary as may be determined by the board, and shall be paid for necessary expenses while engaged in the performance of his official duties. The other members of the said board shall receive the sum of ten dollars for each day actually employed in the discharge of their official duty and their necessary expenses while engaged therein: Provided, that the compensation and expenses of the secretary and members of the said board of pharmacy shall be paid out of the fees received by the board. (Rev., s. 4476; 1905, c. 108, s. 2; 1921, c. 57, s. 2; C. S. 6655.)

§ 90-59. Secretary to investigate and prosecute.—Upon information that any person in violation of this article has been or is being engaged by any member, the secretary of the board of pharmacy or any one appointed by the said board of pharmacy shall promptly commence investigations of such matters, and, upon probable cause appearing, shall file complaint and prosecute the offender. All

finances and penalties prescribed in this article shall be recoverable by suit in the name of the people of the state. In all prosecutions for the violation of any of the provisions of this article, a certificate under oath by the secretary of the board of pharmacy shall be competent and admissible as evidence in any court of the state that the person so charged with the violation of this article is not a registered pharmacist or assistant pharmacist, as required by law. (Rev., s. 4477; 1905, c. 108, s. 11; 1923, c. 74, s. 1; C. S. 6656.)

§ 90-60. Fees collectible by board.—The board of pharmacy shall be entitled to charge and collect the following fees: For the examination of an applicant for license as a pharmacist, ten dollars; for renewing the license as a pharmacist or an assistant pharmacist, ten dollars; for licenses without examination as provided in § 90-64, original, twenty-five dollars, and renewal thereof, ten dollars; for original registration of a drug store, twenty-five dollars, and renewal thereof, fifteen dollars; for issuing a permit to a physician to conduct a drug store in a village of not more than five hundred inhabitants,* ten dollars; for renewal of permit to a physician to conduct a drug store in a village of not more than five hundred inhabitants,* five dollars. All fees shall be paid before any applicant may be admitted to examination or his name placed upon the register of pharmacists or before any license or permit, or any renewal thereof, may be issued by the board. (1905, c. 108, s. 12; Rev., s. 4478; C. S. 6657; 1921, c. 57, s. 3; 1945, c. 572, s. 3.)

§ 90-61. Application and examination for license, prerequisites.—Every person licensed or registered as a pharmacist on February 4, 1905, under the laws of this state shall be entitled to continue in the practice of his profession until the expiration of the term for which his certificate of registration or license was issued. Every person who shall desire to be licensed as a pharmacist shall file with the secretary of the board of pharmacy an application, duly verified under oath, setting forth the name and age of the applicant, the place or places at which and

* Changed to eight hundred in 1953.

the time he has spent in the study of the science and art of pharmacy, the experience in the compounding of physicians' prescriptions which the applicant has had under the direction of a legally licensed pharmacist, and such applicant shall appear at a time and place designated by the board of pharmacy and submit to an examination as to his qualifications for registration as a licensed pharmacist. The application referred to above shall be prepared and furnished by the board of pharmacy.

In order to become licensed as a pharmacist, within the meaning of this article, an applicant shall be not less than twenty-one years of age, he shall present to the board of pharmacy satisfactory evidence that he has had four years experience in pharmacy under the instruction of a licensed pharmacist, and that he is a graduate of a reputable school or college of pharmacy, and he shall also pass a satisfactory examination of the board of pharmacy: Provided, however, that the actual time of attendance at a reputable school or college of pharmacy, not to exceed three years, may be deducted from the time of experience required. Provided, further, that any person legally registered or licensed as a pharmacist by another state board of pharmacy, and who has had fifteen years continuous experience in North Carolina under the instruction of a licensed pharmacist next preceding his application shall be permitted to stand the examination to practice pharmacy in North Carolina upon application filed with said board. Any person who has had two years of college training and has been filling prescriptions in a drug store or stores for twenty years or longer may take the examination as provided in the above proviso. (Rev., ss. 4479, 4480; 1905, c. 108, s. 13; 1915, c. 165; 1921, c. 52; 1933, c. 206, ss. 1, 2; 1935, c. 181; 1937, c. 94; C. S. 6658.)

§ 90-62. **When license issued**—If an applicant for license as pharmacist has complied with all the requirements of § 90-60 and 90-61, the board of pharmacy shall enroll his name upon the register of pharmacists and issue to him a license, which shall entitle him to practice as a pharmacist up to the first day of January next ensuing, as provided in this article for the annual re-

newal of every registration. (Rev., s. 4481; 1905, c. 108, s. 15; 1921, c. 68, s. 1; C. S. 6659.)

§ 90-63. **Certain assistant pharmacist may take registered pharmacist's examination; no original assistants' certificates issued after January 1, 1939**—Every person who is the holder of a certificate as a registered assistant pharmacist, issued prior to January first, one thousand nine hundred and thirty-nine, shall be admitted to the registered pharmacist examination. After January first, one thousand nine hundred and thirty-nine, the board shall not issue an original certificate to any person as a registered assistant pharmacist: Provided, however, that nothing in this section shall prevent any person who was registered as an assistant pharmacist prior to January first, one thousand nine hundred and thirty-nine, from continuing to practice as a registered assistant pharmacist. (1937, c. 402.)

§ 90-64. **When license without examination issued**—The board of pharmacy may issue licenses to practice as pharmacists in this state, without examination, to such persons as have been legally registered or licensed as pharmacists by other boards of pharmacy, if the applicant for such license shall present satisfactory evidence of the same qualifications as are required from licentiates in this state, and that he was registered or licensed by examination by such other board of pharmacy, and that the standard of competence required by such board of pharmacy is not lower than that required in this state. All applicants for license under this section shall, with their application, forward to the secretary of the board of pharmacy a fee of twenty-five dollars. (Rev. s. 4482; 1905, c. 108, s. 16; C. S. 6660; 1945, c. 572, s. 2.)

§ 90-65. **When license refused or revoked for fraud**—The board of pharmacy may refuse to grant a license to any person guilty of felony or gross immorality, or who is addicted to the use of alcoholic liquors or narcotic drugs to such an extent as to render him unfit to practice pharmacy; and the board of pharmacy may, after due notice and hearing, revoke a license for like cause or any license which has been procured by fraud. Any license or permit, or renewal

hereof, obtained through fraud or by any fraudulent or false representations shall be void and of no effect in law. (Rev., s. 483; 1905, c. 108, ss. 17, 25; C. S. 6661.)

§ 90-66. **Expiration and renewal of license; failure to renew misdemeanor**—Every licensed pharmacist or assistant pharmacist who desires to continue in the practice of his profession, and every physician holding a permit to sell drugs in a village of not more than six hundred inhabitants,* shall within thirty days next preceding the expiration of his license or permit, file with the secretary and treasurer of the board of pharmacy an application for the renewal thereof, which application shall be accompanied by the fee hereinbefore prescribed. If the board of pharmacy shall find that an applicant has been legally licensed in this state, and is entitled to a renewal thereof, or to a renewal of a permit, it shall issue to him a certificate attesting that fact. And if any pharmacist or assistant pharmacist shall fail, for a period of sixty days after the expiration of his license, to make application to the board for its renewal, his name shall be erased from the register of licensed pharmacists and assistant pharmacists and such person, in order to again become registered as a licensed pharmacist or assistant pharmacist shall be required to pay the same fee as in the case of original registration. And if any holder of a permit to sell drugs in a village of not more than six hundred inhabitants* shall fail, for a period of sixty days after the expiration of his permit, to make application for the renewal thereof, his name shall be erased from the register of persons holding such permits, and he may be restored thereto only upon the payment of the fee required for the granting of original permit. The registration of every license and every permit issued by the board shall expire on the thirty-first day of December next ensuing the granting thereof: Provided, that the board of pharmacy, in its discretion, shall have the power to issue a license or permit, or renewals thereof, to any person whose license or permit has been revoked by operation of law or by the board of pharmacy, or whose renewal thereof has been refused by the board of pharmacy, after the expiration of one year from the

date of such revocation of license or permit, or refusal of a renewal thereof, upon satisfactory proof that such person is entitled to such license or permit, or to a renewal thereof.

Every holder of a license or permit as a pharmacist or assistant pharmacist, who after the expiration thereof continues to carry on the business for which the license or permit was granted, without renewing the same as required by this section, shall be guilty of a misdemeanor, and fined not less than five nor more than twenty-five dollars. (Rev., ss. 3653, 4484; 1905, c. 108, ss. 18, 19, 27; 1911, c. 48; 1921, c. 68, s. 2; C. S. 6662.)

§ 90-67. **License to be displayed; penalty**—Every certificate or license to practice as a pharmacist or assistant pharmacist and every permit to a practicing physician to conduct a pharmacy or drug store in a village of not more than six hundred inhabitants,* and every last renewal of such license or permit, shall be conspicuously exposed in the pharmacy or drug store or place of business of which the pharmacist, or other person to whom it is issued, is the owner or manager, or in which he is employed.

The holder of such license, permit, or renewal who fails to expose it as required by this section shall be guilty of a misdemeanor, and fined not less than five nor more than twenty-five dollars, and each day that such license, permit, or renewal thereof shall not be exposed shall be held to constitute a separate and distinct offense. (Rev., ss. 3651, 4485; 1905, c. 108, ss. 18, 26; 1921, c. 68, s. 3; C. S. 6663.)

§ 90-68. **Unlicensed person not to use title of pharmacist; penalty**—It shall be unlawful for any person not legally licensed as a pharmacist or assistant pharmacist to take, use or exhibit the title of pharmacist or assistant pharmacist or licensed or registered pharmacist, or the title druggist or apothecary, or any other title, name, or description of like import.

Every person who violates this section shall be guilty of a misdemeanor and be fined not less than twenty-five nor more than one hundred dollars. (Rev. ss. 3652, 4486;

* Changed to eight hundred in 1953.

1905, c. 108, ss. 22, 29; 1921, c. 68, s. 4; C. S. 6664.)

§ 90-69. **Purity of drugs protected; seller responsible; adulteration misdemeanor**—Every person who shall engage in the sale of drugs, chemicals, and medicines shall be held responsible for the quality of all drugs, chemicals, and medicines he may sell or dispense, with the exception of those sold in the original packages of the manufacturers, and also those known as "patent or proprietary medicines."

If any person engaged in the sale of drugs, chemicals, and medicines shall intentionally adulterate, or cause to be adulterated, or expose to sale knowing the same to be adulterated, any drugs, chemicals, or medical preparations, he shall be guilty of a misdemeanor and liable to a fine not exceeding one hundred dollars, and if he is a licensed pharmacist or assistant pharmacist his name shall be stricken from the register of licensed pharmacists and assistant pharmacists. (Rev., ss. 3648, 4488; Code, s. 3145; 1881, c. 355, s. 11; 1897, c. 182, s. 7; 1905, c. 108, s. 3; 1921, c. 68, s. 5; C. S. 6665.)

§ 90-70. **Prescriptions preserved; copies furnished**—Every proprietor or manager of a drug store or pharmacy shall keep in his place of business a suitable book or file in which shall be preserved for a period of not less than five years the original of every prescription compounded or dispensed at such drug store or pharmacy. Upon the request of the prescribing physician, or of the person for whom such prescription was compounded or dispensed, the proprietor or manager of such drug store or pharmacy shall furnish a true and correct copy of such prescription, and said book or file of original prescriptions shall at all times be open to the inspection and examination of duly authorized officers of the law or other persons authorized and directed by the board of pharmacy to make such inspection and examination. (Rev., s. 4490; 1905, c. 108, s. 21; C. S. 6666.)

§ 90-71. **Selling drugs without license prohibited; drug trade regulated**—It shall be unlawful for any person not licensed as a pharmacist or assistant pharmacist within the meaning of this article to conduct or

manage any pharmacy, drug or chemical store, apothecary shop or other place of business for the retailing, compounding, dispensing of any drugs, chemicals, poison, or for the compounding of physicians' prescriptions, or to keep exposed to sale at retail any drugs, chemicals, or poison except as hereinafter provided, or for a person not licensed as a pharmacist within the meaning of this article to compound, dispense, or sell at retail any drug, chemical, poison, or pharmaceutical preparation upon the prescription of a physician or otherwise or to compound physicians' prescriptions except as an aid to and under the immediate supervision of a person licensed as a pharmacist or assistant pharmacist under this article. Provided, that during the temporary absence of the licensed pharmacist in charge of any pharmacy, drug or chemical store, a licensed assistant pharmacist may conduct or have charge of said store. And it shall be unlawful for any owner or manager of pharmacy or drug store or other place of business to cause or permit any other than a person licensed as a pharmacist or assistant pharmacist to compound, dispense, or sell at retail any drug, medicine, or poison except as an aid to and under the immediate supervision of a person licensed as a pharmacist or assistant pharmacist.

Nothing in this section shall be construed to interfere with any legally registered practitioner of medicine in the compounding of his own prescriptions, nor with the exclusively wholesale business of a dealer who shall be licensed as a pharmacist or who shall keep in his employ at least one person who is licensed as a pharmacist, nor with the selling at retail of nonpoisonous domestic remedies, nor with the sale of patent or proprietary preparations which do not contain poisonous ingredients, nor except in cities and towns wherein there is located an established drug store, and except in the counties of Avery, Bertie, Cleveland, Cabarrus, Cumberland, Duplin, Forsyth, Gaston, Guilford, Halifax, Harnett, Iredell, Henderson, Mecklenburg, Montgomery, Nash, Pender, Moore, New Hanover, Orange, Richmond, Rockingham, Robeson, Rowan, Scotland, and Wilson, shall

is section be construed to interfere with the sale of paregoric, Godfrey's Cordial, spiritin, alum, borax, bicarbonate of soda, loamel tablets, castor oil, compound cardiac pills, copperas, cough remedies which contain no poison or narcotic drugs, cream of tartar, distilled extract witch hazel, opium salts, harlem oil, gum asafetida, gum sulphur, glycerin, peroxide of hydrogen, troleum jelly, saltpetre, spirit of turpentine, spirit of camphor, sweet oil, and sulfate of quinine, nor with the sale of poisonous substances which are sold exclusively for use in the arts or for use as insecticides when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word "Poison," the vignette of the skull and crossbones, and the name of at least two readily obtainable antidotes.

In any village of not more than six hundred inhabitants* the board of pharmacy may, after due investigation, grant any legally registered practicing physician a permit to conduct a drug store or pharmacy in such village, which permit shall not be valid in any other village than the one for which it was granted, and shall cease and terminate when the population of the village for which such permit was granted shall become greater than six hundred.* (Rev., s. 4487; 1905, c. 108, s. 4; 1921, c. 68, s. 6; Ex. Sess. 1924, c. 116; C. S. 6667.)

§ 90-72. **Compounding prescriptions without license**—If any person, not being licensed as a pharmacist or assistant pharmacist, shall compound, dispense, or sell at retail any drug, medicine, poison, or pharmaceutical preparation, either upon a physician's prescription or otherwise, and if any person being the owner or manager of a drug store, pharmacy, or other place of business, shall cause or permit any one not licensed as a pharmacist or assistant pharmacist to dispense, sell at retail, or compound any drug, medicine, poison, or physician's prescription contrary to the provisions of this article, he shall be deemed guilty of a misdemeanor, and fined not less than twenty-five nor more than one hundred dollars.

* Changed to eight hundred in 1953.

(Rev., s. 3649; 1905, c. 108, s. 24; 1921, c. 68, s. 7; C. S. 6668.)

§ 90-73. **Conducting pharmacy without license**—If any person, not being licensed as a pharmacist, shall conduct or manage any drug store, pharmacy, or other place of business for the compounding, dispensing, or sale at retail of any drugs, medicines, or poisons, or for the compounding of physicians' prescriptions contrary to the provisions of this article, he shall be deemed guilty of a misdemeanor, and be fined not less than twenty-five nor more than one hundred dollars, and each week such drug store or pharmacy or other place of business is so unlawfully conducted shall be held to constitute a separate and distinct offense. (Rev., s. 3650; 1905, c. 108, s. 23; C. S. 6669.)

§ 90-74. **Pharmacist obtaining license fraudulently**—If any person shall make any fraudulent or false representations for the purpose of procuring a license or permit, or renewal thereof, either for himself or for another, he shall be guilty of a misdemeanor, and fined not less than twenty-five nor more than one hundred dollars; and if any person shall wilfully make a false affidavit or any other false or fraudulent representation for the purpose of procuring a license or permit, or renewal thereof, either for himself or for another, he shall be deemed guilty of perjury, and upon conviction thereof shall be subject to like punishment as is now prescribed for the crime of perjury. (Rev., s. 3654; 1905, c. 108, s. 25; C. S. 6670.)

§ 90-75. **Registration of drug stores and pharmacies**—The Board of Pharmacy shall require and provide for the annual registration of every drug store and pharmacy doing business in this State. The proprietor of every drug store or pharmacy opening for business after January 1, 1928, shall apply to the Board of Pharmacy for registration, and it shall be unlawful for any drug store or pharmacy to do business until so registered. All permits issued under this section shall expire on December thirty-first of each year.

The terms "drug store" and "pharmacy" as used herein shall mean any store or other place in which drugs, medicines, chemicals, poisons, or prescriptions are com-

pounded, dispensed, or sold at retail, or which uses the title "drug store," "pharmacy" or "apothecary" or any combination of such titles, or any title or description of like import: Provided, that nothing in this section shall apply to the sale of domestic remedies, patent and proprietary preparations, and insecticides as set out and provided for in paragraph two of § 90-71. (1927, c. 28, s. 1.)

§ 90-76. **Substitution of drugs, etc., prohibited**—Any person or corporation engaged in the business of selling drugs, medicines, chemicals, or preparations for medical use or of compounding or dispensing physicians' prescriptions, who shall, in person or by his or its agents or employees, or as agent or employee of some other person, knowingly sell or deliver to any person a drug, medicine, chemical preparation for medicinal use, recognized or authorized by the latest edition of the United States Pharmacopoeia and National Formulary, or prepared according to the private formula of some individual or firm, other or different from the drug, medicine, chemical or preparation for medicinal use, recognized or authorized by the latest edition of the United States Pharmacopoeia and National Formulary, or prepared according to the private formula of some individual or firm, ordered or called for by such person, or called for in a physician's prescription, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine or imprisonment, or both, at the discretion of the court: Provided, that this section shall apply to registered drug stores and their employees only. (1937, c. 59.)

DEALING IN SPECIFIC DRUGS REGULATED

§ 90-77. **Poisons; sales regulated; label; penalties**—It shall be unlawful for any persons to sell or deliver to any person any of the following described substances or any poisonous compound, combination, or preparation thereof, to-wit: The compounds and salts of arsenic, antimony, lead, mercury, silver and zinc, oxalic and hydrocyanic acids and their salts, the concentrated mineral acids, carbolic acid, the essential oils of almonds, pennyroyal, tansy and savine, cro-

ton oil, creosote, chloroform, chloral hydrate, cantharides, or any aconite, belladonna, bitter almonds, colchicum, cotton root, conium, cannabis indica, digitalis, hyoseyamus, nux vomica, opium, ergot, cannabis stramonius, or any of the poisonous alkaloids or alkaloidal salts or other poisonous principle derived from the foregoing, or cocaine or any other poisonous alkaloids or their salts, or any other virulent poisons, except in the manner following: It shall first be learned by due inquiry that the person to whom delivery is made is aware of the poisonous character of the substance, and that it is desired for a lawful purpose, and the box, bottle, or other package shall be plainly labeled with the name of the substance, the word "Poison," and the name of the person or firm dispensing the substance.

Before a delivery is made of any of the following substances, to-wit, the compounds and salts of arsenic, antimony and mercury, hydrocyanic acid and its salts, strychnin and its salts, and the essential oil of bitter almonds, there shall be recorded in a book kept for the purpose the name of the article, the quantity delivered, the purpose for which it is required as represented by the purchaser, the date of delivery, the name and address of the purchaser, the name of the dispenser, which book shall be preserved for at least five years and shall at all times be open to the inspection of the proper officer of the law: Provided, that the foregoing provision shall not apply to articles dispensed upon the order of persons believed by the dispenser to be lawfully authorized practitioners of medicine or dentistry: Provided also, that the record of sale and delivery above mentioned shall not be required of manufacturers and wholesalers who shall sell any of the foregoing substances at wholesale sale; but the box, bottle, or other package containing such substances, when sold at wholesale, shall be properly labeled with the name of the substance, the word "Poison," and the name and address of the manufacturer or wholesaler: Provided further, that it shall not be necessary to place a poison label upon, or to record the delivery of, the sulphide of antimony or the dioxide or carbonate of zinc or lead, or of colors ground in oil and intended for use as paint, or

is green, when dispensed in the original package of the manufacturer or wholesaler, calomel, paregoric, or other preparations of opium containing less than two grains of opium to the fluid ounce, nor in the case of preparations containing any of the substances named in this section when in a tin, box, bottle, or other package, or when the bulk of two fluid ounces or the weight of two avoirdupois ounces does not contain more than an adult medicinal dose of such poisonous substance.

If any person shall sell or deliver to any person any poisonous substance specified in this section without labeling the same and ordering the delivery thereof in the manner prescribed, he shall be guilty of a misdemeanor, and fined not less than twenty-five nor more than one hundred dollars. (Rev., 1865, 4489; 1905, c. 108, ss. 20, 28, S. 6671.)

§ 90-78. Certain patent cures and devices; sale and advertising forbidden—It shall be unlawful for any person, firm, association, or corporation in the state, or any agent thereof, to sell or offer for sale any proprietary or patent medicine or remedy purporting to cure cancer, consumption, diabetes, paralysis, Bright's disease, or any other disease for which no cure has been found, or any mechanical device whose claims for the cure or treatment of disease are false or fraudulent; and it shall be unlawful for any person, firm, association, or corporation in the state, or agent thereof, to publish in any manner, or by any means, or cause to be published, circulated, or in any way placed before the public any advertisement in a newspaper or other publication or in the form of books, pamphlets, circulars, either printed or written, or by any drawing, map, print, tag, or by any other means whatsoever, any advertisement of any kind or description offering for sale or commending to the public any proprietary or patent medicine or remedy purporting to cure cancer, consumption, diabetes, paralysis, Bright's disease, or any other disease for which no cure has been found, or any mechanical device for the treatment of disease, when the North Carolina board of health shall declare that such

device is without value in the treatment of disease.

Any person, firm, association, or corporation violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding one hundred dollars for each offense. Each sale, offer for sale, or publication of any advertisement for sale of any of the medicines, remedies, or devices mentioned in this section shall constitute a separate offense. (1917, c. 27, ss. 1, 2, 3; C. S. 6684.)

§ 90-79. Certain patent cures and devices; enforcement of law—To provide for the efficient enforcement of § 90-78, the same shall be under the supervision and management of the North Carolina board of pharmacy, and it shall be the duty of all registered pharmacists to report immediately any violations thereof to the secretary of the board of pharmacy, and any willful failure to make such report shall have the effect of revoking his license to practice pharmacy in this state. (1917, c. 27, ss. 4, 5; C. S. 6685.)

§ 90-80. Department of agriculture to analyze patent medicines—The chemists and other experts of the department of agriculture shall, under such rules and regulations as may be prescribed by the board of pharmacy, and upon request of the secretary of said board, make an analytical examination of all samples of drugs, preparations, and compounds sold or offered for sale in violation of §§ 90-78 and 90-79. (1917, c. 27, s. 6; C. S. 6686.)

§ 90-85.1. Enjoining illegal practices—The Board of Pharmacy may, if it shall find that any person is violating any of the provisions of this Article, and after notice to such person of such violations, apply to the Superior Court for a temporary or permanent restraining order or injunction to restrain such person from continuing such illegal practices. If upon such application, it shall appear to the Court that such person has violated or is violating the provision of this Article, the Court may issue an order restraining any further violations thereof. All such actions by the Board for injunctive relief shall be governed by the provisions of Article 37 of the chapter on

“civil procedure”; Provided, such injunctive relief may be granted regardless of whether criminal prosecution has been or may be instituted under any of the provisions of this Article.

UNIFORM NARCOTIC DRUG ACT

§ 90-86. **Title of article**—This article may be cited as the Uniform Narcotic Drug Act. (1935, c. 477, s. 26.)

§ 90-87. **Definitions**—The following words and phrases as used in this article shall have the following meanings unless the context otherwise requires:

(a) “Person” includes any corporation, association, copartnership or one or more individuals.

(b) “Physician” means any person authorized by law to practice medicine in this State and any other person authorized by law to treat sick and injured human beings in this State and to use narcotic drugs in connection with such treatment.

(c) “Dentist” means any person authorized by law to practice dentistry in this State.

(d) “Veterinarian” means any person authorized by law to practice veterinary in this State.

(e) “Manufacturer” means a person who by compounding, mixing, cultivating, growing or other process produces or prepares narcotic drugs, but does not include a pharmacist who compounds narcotic drugs to be sold or dispensed on prescription.

(f) “Wholesaler” means a person who supplies narcotic drugs that he himself has not produced or prepared, on official written order, but not on prescription.

(g) “Pharmacist” means a registered pharmacist of this State.

(h) “Pharmacy owner” means the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a registered pharmacist; but nothing in this article contained shall be construed as conferring on a person who is not registered or licensed as a pharmacist any authority, right or privilege that is not granted to him by the pharmacy laws of this State.

(i) “Hospital” means an institution for the care and treatment of the sick and injured, approved by the state board of pharmacy as proper to be entrusted with the

custody of narcotic drugs under the direction of a physician, dentist or veterinarian.

(j) “Laboratory” means a laboratory to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific, experimental and medical purposes and for purposes of instruction approved by the state board of pharmacy.

(k) “Sale” includes barter, exchange offer therefore, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee.

(l) “Coca leaves” includes cocaine and any compound, manufacture, salt, derivative mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthesized or made.

(m) “Opium” includes morphine, codeine and heroin and any compound, manufacture, salt, derivative, mixture, or preparation of opium.

(n) “Cannabis” includes the following substances under whatever means they may be designated:

(1) The dried flowering or fruiting top of the pistillate plant cannabis sativa from which the resin has not been extracted

(2) The resin extracted from such top and

(3) Every compound, manufacture, salt, derivative, mixture, or preparation of such resin or of such tops from which the resin has not been extracted; and

(4) Peyote or mara huanna.

(o) “Narcotic drugs” means coca leaves, opium, cannabis, and every other substance neither chemically nor physically distinguishable from them; any other drug to which the Federal Narcotic Laws may now apply and any drug found by the State Board of Health, after reasonable notice and opportunity for hearing, to have an addictive forming or addiction sustaining liability similar to morphine or cocaine, from the effective date of determination of such finding by said State Board of Health.

(p) “Federal narcotic law” means the laws of the United States relating to opium, coca leaves and other narcotic drugs.

(q) “Official written order” means an order written on a form provided for the

purpose by the United States commissioner of narcotics, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law.

(r) "Dispense" includes distribute, leave with, give away, dispose of or deliver.

(s) "Registry number" means the number assigned to each person registered under the federal narcotic laws. (1935, c. 477, s. 1.)

§ 90-88. **Manufacture, sale, etc., of narcotic drugs regulated**—It shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this article. (1935, c. 477, s. 2.)

§ 90-89. **Conditions of sale of drugs**—A duly licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons but only on official written orders:

(a) To a manufacturer, wholesaler, pharmacist or pharmacy owner.

(b) To a physician, dentist or veterinarian.

(c) To a person in charge of a hospital, but only for use by or in that hospital.

(d) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medicinal purposes.

A duly licensed manufacturer or wholesaler may sell narcotic drugs to any of the following persons:

(a) On a special written order accompanied by a certificate of exemption, as required by the federal narcotic laws, to a person in the employ of the United States government or of any state, territory, district, county, municipality, or insular government, purchasing, receiving, possessing or dispensing narcotic drugs by reason of his official duties.

(b) To a master of a ship or a person in charge of any air craft upon which no physician is regularly employed for the actual medical needs of persons on board such ship or air craft when not in port, provided such narcotic drug shall be sold to the master of such ship or person in charge of such air craft only in pursuance of a special order form approved by a commanding medical officer or acting assist-

ant surgeon of the United States public health service.

(c) To a person in a foreign country if the provisions of the federal narcotic laws are complied with. (1935, c. 477, s. 3.)

§ 90-90. **Execution of written orders; use in purchase; preserving copies for inspection**—An official written order for any narcotic drug shall be signed in duplicate by the person giving said order or by his duly authorized agent. The original shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein. In the event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two years, in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this article. It shall be deemed a compliance with this section if the parties to the transaction have complied with the federal narcotic laws respecting the requirements governing the use of order forms. (1935, c. 477, s. 4.)

§ 90-91. **Lawful possession of drugs**—Possession of or control of narcotic drugs obtained as authorized in this article shall be lawful if obtained in the regular course of business, occupation, profession, employment or duty of the possessor. (1935, c. 477, s. 5.)

§ 90-92. **Dispensing of drugs regulated**—A person in charge of a hospital or of a laboratory, or in the employ of this State or of any other state, or of any political subdivision thereof, and the master or other proper officer of a ship or air craft, who obtains narcotic drugs under the provisions of this article or otherwise shall not administer, nor dispense, nor otherwise use such drugs within this State except within the scope of his employment or official duty and then only for scientific or medicinal purposes and subject to the provisions of this article. (1935, c. 477, s. 6.)

§ 90-93. **Sale of drugs on doctor's prescription**—A pharmacist in good faith may sell and dispense narcotic drugs to any person upon the written prescription of a physician, dentist or veterinarian, provided it is properly executed, dated and signed by the person prescribing on the day when issued

and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address and registry number under the federal narcotic laws of the person so prescribing if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed. A person filling the prescription shall write the date of filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years so as to be readily accessible for the inspection of any officers engaged in the enforcement of this article. The prescription shall not be refilled.

The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler, pharmacist or pharmacy owner but only upon an official written order.

A pharmacist, only upon an official written order, may sell to a physician, dentist or veterinarian in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than twenty per centum (20%) of the complete solution, to be used for medicinal purposes. (1935, c. 477, s. 7.)

§ 90-94. Prescribing, administering or dispensing by physicians or dentists—A physician or a dentist, in good faith and in the course of his professional practice, only, may prescribe on a written prescription, administer, or dispense narcotic drugs or may cause the same to be administered by a nurse or interne under his direction and supervision. Such a prescription shall be dated and signed by the person prescribing on the day when issued and shall bear the full name and address of the patient for whom the narcotic drug is prescribed and the full name, address and registry number under the federal narcotic laws of the person prescribing, providing he is required by those laws to be so registered. (1935, c. 477, s. 8.)

§ 90-95. Prescribing, administering or dispensing by veterinarians—A veterinarian,

in good faith and in the course of his professional practice only not for use by human being, may prescribe on a written prescription, administer and dispense narcotic drugs and he may cause them to be administered by an assistant or orderly under his direction and supervision. Such a prescription shall be dated and signed by the person prescribing on the day when issued and shall bear the full name and address of the owner of the animal, the species of the animal for which the narcotic drug is prescribed and the full name, address and registry number under the federal narcotic laws of the person prescribing, provided he is required by those laws to be so registered (1935, c. 477, s. 8.)

§ 90-96. Returning unused portions of drugs—Any person who has obtained from a physician, dentist or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist or veterinarian shall return to such physician, dentist or veterinarian any unused portion of such drug when it is no longer required by the patient. (1935, c. 477, s. 8.)

§ 90-97. Article not applicable in certain cases—(a) Except as otherwise in this Article specifically provided, this Article shall not apply to the administering, dispensing or selling at retail of any medicinal preparation that contains in one fluid ounce, or if a solid or semi-solid preparation, in one avoirdupois ounce, (1) not more than one grain of codeine or of any of its salts, or (2) not more than one-sixth grain of dihydrocodeine or any of its salts, or (3) not more than one-fourth grain of morphine or any of its salts.

(b) The exemption authorized by this Section shall be subject to the following conditions: (1) that the medicinal preparation administered, dispensed, or sold, shall contain, in addition to the narcotic drug in it, some drug or drugs conferring upon its medicinal qualities other than those possessed by the narcotic drug alone; and (2) that such preparation shall be administered, dispensed, and sold in good faith as a medicine and not for the purpose of evading this Article.

(c) Nothing in this Section shall be construed to limit the quantity of codeine, di-

hydrocodeine, or morphine or any of their salts that may be prescribed, administered, dispensed, or sold, in compliance with the general provisions of this Article.

§ 90-98. Records of drugs dispensed; records of manufacturers and wholesalers; records of pharmacists; written orders unnecessary for certain drugs; invoices rendered with sales—Every physician, dentist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed, or professionally used by him otherwise than by prescription. It shall, however, be deemed a sufficient compliance with this section if any such person using small quantities or solutions or other preparations of such drugs or local application shall keep a record of the quantity, character, and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients.

Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of this section.

Pharmacists and pharmacy owners shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of this article.

The keeping of a record required by or under the federal narcotic law shall constitute the only record required to be kept by every person who purchases for resale or who sells narcotic drug preparations exempted.

Written orders shall not be required for the sale of cannabis indica or cannabis sativa, or peyote and mara huanna, and the provisions of the article in respect to written orders and records shall not apply to cannabis indica, cannabis sativa, peyote and mara huanna, but manufacturers and wholesalers of cannabis indica, cannabis sativa, peyote and mara huanna shall be required to render with every sale of cannabis indica

or cannabis sativa, peyote and mara huanna, an invoice, whether such sale be for cash or on credit; and such invoice shall contain the date of such sale, the name and address of the purchaser, and the amount of cannabis indica or cannabis sativa or peyote and mara huanna so sold.

Every purchaser of cannabis indica, cannabis sativa or peyote and mara huanna from a wholesaler or manufacturer shall be required to keep the invoice rendered with such purchase for a period of two years. (1935, c. 477, s. 10.)

§ 90-99. Labeling packages containing drugs—Whenever a manufacturer sells or disposes of a narcotic drug and whenever a wholesaler sells and dispenses a narcotic drug in a package prepared by him, he shall securely affix to each package in which that drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind and form of narcotic drug contained therein. No person, except a pharmacist for the purpose of filling a prescription under this article, shall alter, deface or remove any label so affixed. (1935, c. 477, s. 11.)

§ 90-100. Labeling containers of drugs dispensed on prescriptions—Whenever a pharmacist sells or dispenses any narcotic drug on prescription issued by a physician, dentist, or veterinarian he shall affix to the container in which such drug is sold or dispensed, a label showing his own name, address, and registry number, or the name, address and registry number of the pharmacist or pharmacy owner for whom he is lawfully acting; the name and address of the patient, or, if the patient is an animal, the name and address of the owner of the animal and the species of the animal; the name, address and registry number of the physician, dentist or veterinarian, by whom the prescription was written; and such directions as may be stated on the prescription. No person shall alter, deface or remove any label so affixed as long as any of the original contents remain. (1935, c. 477, s. 11.)

§ 90-101. Lawful possession in original containers—A person to whom or for whose use any narcotic drug has been prescribed, sold or dispensed by a physician, dentist,

pharmacist, or other person authorized under the provisions of this article, the owner of any animal for which any such drug has been prescribed, sold, or dispensed by a veterinarian, may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same. (1935, c. 477, s. 12.)

§ 90-102. **Common carriers and warehousemen excepted; other persons exempt**—The provisions of this article restricting the possessing and having control of narcotic drugs shall not apply to common carriers or to warehousemen while engaged in lawfully transporting or storing such drugs, or to any employees of the same acting within the scope of his employment; or to public officers or employees in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties. (1935, c. 477, s. 13.)

§ 90-103. **Places unlawfully possessing drugs declared nuisances**—Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same shall be deemed a common nuisance. No person shall keep or maintain such common nuisance. (1935, c. 477, s. 14.)

§ 90-104. **Forfeiture and disposition of drugs unlawfully possessed**—All narcotic drugs the lawful possession of which is not established, or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited, and disposed of as follows:

(a) The court or magistrate having jurisdiction shall immediately notify the state board of pharmacy and unless otherwise requested within fifteen days by the state board of pharmacy in accordance with subsection (b) of this section shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place and manner of destruction, shall be kept, and a

return under oath, reporting said destruction, shall be made to the court or magistrate and to the United States commissioner of narcotics, by the officer who destroys them.

(b) Upon written application by the state board of pharmacy the court or magistrate by whom the forfeiture of narcotic drugs has been decreed may order the delivery of them except heroin and its salts and derivatives to said state board of pharmacy for distribution or destruction, as hereinafter provided.

(c) Upon application by any hospital within this State, not operated for private gain the state board of pharmacy may in its discretion deliver any narcotic drugs that have come into its custody by authority of this section to the applicant for medicinal use. The state board of pharmacy may from time to time deliver excess stocks of such drugs to the United States commissioner of narcotics, or shall destroy the same.

(d) The state board of pharmacy shall keep a full and complete record of all drugs received and of all drugs disposed of, showing the exact kinds, quantities and forms of such drugs; the persons from whom received and to whom delivered; by whose authority received, delivered and destroyed; and the dates of the receipt, disposal, or destruction which record shall be open to inspection by all federal and state officers charged with the enforcement of federal and state narcotic laws. (1935, c. 477, s. 15.)

§ 90-105. **Prescriptions, stocks, etc., open to inspection by officials**—Prescriptions, orders and records, required by this article and stocks of narcotic drugs shall be open for inspection only to federal, state, county and municipal officers, whose duty it is to enforce the laws of this State or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription, order or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing board or office to which prosecution or proceeding the person to whom such prescriptions, orders or records relate is a party. (1935, c. 477, s. 16.)

§ 90-106. **Fraudulent attempts to obtain**

drugs prohibited—No person shall obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of a narcotic drug (a) by fraud, deceit, misrepresentation, or subterfuge; or (b) by the forgery or alteration of a prescription or of any written order; or (c) by the concealment of a material fact; or (d) by the use of false name or the giving of a false address.

(a) Information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(b) No person shall wilfully make a false statement in any prescription, order, report, or record, required by this article.

(c) No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, pharmacy owner, physician, dentist, veterinarian, or other authorized person.

(d) No person shall make or utter any false or forged prescription or written order.

(e) No person shall affix any false or forged label to a package or receptacle containing narcotic drugs. (1935, c. 477, s. 17.)

§ 90-107. **Application of certain restrictions**—The provision of § 90-106 shall apply to all transactions relating to narcotic drugs under the provisions of § 90-97 in the same way as they apply to transactions under all other sections. (1935, c. 477, s. 18.)

§ 90-108. **Possession of hypodermic syringes and needles regulated**—No person except a manufacturer or a wholesaler or a retail dealer in surgical instruments, pharmacist, physician, dentist, veterinarian, nurse or interne shall at any time have or possess a hypodermic syringe or needle or any instrument or implement adapted for the use of habit forming drugs by subcutaneous injections and which is possessed for the purpose of administering habit forming drugs, unless such possession be authorized by the certificate of a physician issued within the period of one year prior hereto. (1935, c. 477, s. 19.)

§ 90-109. **Burden on defendant to prove exemption**—In any complaint, information,

or indictment, and in any action or proceeding brought for the enforcement of any provision of this article, it shall not be necessary to negative any exception, excuse, proviso, or exemption, contained in this article, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the defendant. (1935, c. 477, s. 20.)

§ 90-110. **State board of pharmacy and peace officers to enforce article**—It is hereby made the duty of the state board of pharmacy, its officers, agents, inspectors and representatives, and of all peace officers within the State, including the State Bureau of Investigation, and of all state's attorneys, to enforce all provisions of this article, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this State and of all other states, relating to narcotic drugs. The State Bureau of Investigation is hereby authorized to make initial investigations of all violations of this Article, and is given original but not exclusive jurisdiction in respect thereto with all other law enforcement officers of the State. (1935, c. 477, s. 21.)

§ 90-111. **Penalties for violation**—(a) Any person violating any provision of this Article or any person who conspires, aids, abets, or procures others to do such acts shall upon conviction be punished, for the first offense, by a fine of not more than one thousand dollars (\$1,000.00) or be imprisoned in the penitentiary for not more than five years, or both, in the discretion of the court. For a second violation of this Article, or where in case of a first conviction of violation of this Article, the defendant shall previously have been convicted of a violation of any law of the United States, of this or any other state, territory, or district, relating to the sale or use or possession of narcotic drugs or marijuana, and such violation would have been punishable in this State if the offending act had been committed in this State, the defendant shall be fined not more than two thousand dollars (\$2,000.00) and be imprisoned not less than five or more than ten years. For a third or subsequent violation of this Article, or where the defendant shall previously have

been convicted two or more times in the aggregate of a violation of any law of the United States, or of this or any other state, territory, or district, relating to the sale, use or possession of narcotic drugs or marijuana, and such violation would have been punishable in this State, the defendant shall be fined not more than three thousand dollars (\$3,000.00) and be imprisoned in the penitentiary not less than fifteen (15) years nor more than life imprisonment.

(b) Upon conviction for a second or subsequent offense the sentence provided by this Section shall not be suspended and probation shall not be granted unless the presiding judge shall find that the violation for which the defendant was convicted did not consist of peddling, selling, bartering or otherwise distributing narcotics to others in violation of this Article, or the possession of narcotics for the purpose of peddling, selling, bartering or otherwise distributing narcotics to others in violation of this Article. For the purpose of making the finding provided in this subsection before a sentence may be suspended, the defendant shall have the burden of proving that the violation for which he was convicted did not consist of peddling, selling, bartering or otherwise distributing narcotics to others in violation of this Article or the possession of narcotics for the purpose of peddling, selling, bartering or otherwise distributing narcotics to others in violation of this Article. The charge contained in the warrant or bill of indictment shall not be considered in making such finding for the purpose of suspending the sentence.

(c) If the offense shall consist of the sale, barter, peddling, exchange, dispensing or supplying of marijuana or a narcotic drug to a minor by an adult in violation of any provision of this Article, such person shall upon conviction be punished by a term of not less than ten years nor more than life imprisonment and shall be fined not more than three thousand dollars (\$3,000.00) for the first and all subsequent violations of this Article, and the imposition or execution of sentence shall not be suspended, and probation shall not be granted.

§ 90-111.1. Growing of narcotic plant known as marijuana by unlicensed persons—

A person who without being licensed to do so under the Federal Narcotic Laws, grows the narcotic plant known as marijuana or knowingly allows it to grow on his land without destroying the same shall be guilty of a felony and shall be punished according to the provisions of this Article.

§ 90-111.2. Seizure and forfeiture of vehicles, vessels or aircraft unlawfully used to conceal, convey or transport narcotics.

(a) Except under circumstances authorized in this Article, it shall be unlawful to (1) transport, carry, or convey any narcotic drug in, upon or by means of any vehicle, vessel or aircraft; or (2) to conceal or possess any narcotic drug in or upon any vehicle, vessel or aircraft, or upon the person of anyone in or upon any vehicle, vessel or aircraft; or (3) to use any vehicle, vessel or aircraft to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any narcotic drug.

(b) Any vehicle, vessel or aircraft which has been or is being used in violation of subdivision (a), except a vehicle, vessel or aircraft used by any person as a common carrier in the transaction of business as such common carrier, shall be seized by any peace officer, and forfeited as in case of vehicles vessels or aircraft unlawfully used to conceal, convey or transport intoxicating beverages.

§ 90-111.3 Reports by physician—It shall be the duty of every attending or consulting physician to report to the State Board of Health, promptly, the name, and, if possible, the address of any person under treatment if it appears that such person is an habitual user of any narcotic drug. Such reports shall be open for inspection only to Federal and State officers whose duty it is to enforce the laws of the State or of the United States relating to narcotic drugs, or who are concerned with the commitment, care, treatment and rehabilitation of persons addicted to the use of narcotic drugs. No such officer having knowledge by virtue of his office of any such report shall divulge such knowledge except in connection with his duties.

§ 90-112. Double jeopardy—No person shall be prosecuted for a violation of any

provision of this article if such person has been acquitted or convicted under the federal narcotic laws of the same act or commission, which, it is alleged, constitutes a violation of this article. (1935, c. 477, s. 23.)

§ 90-113. **Construction of article**—This article shall be so interpreted and construed as to effectuate its general purpose and to make uniform the laws of those states which enact it. (1935, c. 477, s. 25.)

AN ACT PROVIDING A PROCEDURE FOR JUDICIAL REVIEW OF DECISIONS OF CERTAIN ADMINISTRATIVE AGENCIES

GENERAL STATUTES—CHAPTER 143

§ 143-306. **Definitions**—As used in this act the terms

(a) "Administrative agency" or "agency" shall mean any state officer, committee, authority, board, bureau, commission, or department authorized by law to make administrative decisions, except those agencies in the legislative or judicial branches of government, and except those whose procedures are governed by Chapter 150 of the General Statutes.

(b) "Administrative decision" or "decision" shall mean any decision, order, or determination rendered by an administrative agency in a proceeding in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an opportunity for agency hearing.

§ 143-307. **Right to judicial review**—Any person who is aggrieved by a final administrative decision, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of such decision under this act, unless adequate procedure for judicial review is provided by some other statute, in which case the review shall be under such other statute. Nothing in this chapter shall prevent any person from invoking any judicial remedy available to him under the law to test the validity of any administrative action not made reviewable under this act.

§ 143-308. **Right to judicial intervention when agency unreasonably delays decision**—Unreasonable delay on the part of any agency in reaching a final administrative de-

cision shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency.

§ 143-309. **Manner of seeking review; time for filing petition; waiver**—In order to obtain judicial review of an administrative decision under this chapter the person seeking review must file a petition in the superior court of Wake County; except that where the original determination in the matter was made by a county agency or county board and appealed to the State Board, the petition may be filed in the Superior Court of the county where the petitioner resides. Such petition may be filed at any time after final decision, but must be filed not later than thirty days after a written copy of the decision is served upon the person seeking the review by personal service or by registered mail, return receipt requested. Failure to file such petition within the time stated shall operate as a waiver of the right of such person to review under this chapter, except that for good cause shown, the judge of the superior court may issue an order permitting a review of the administrative decision under this chapter notwithstanding such waiver.

§ 143-310. **Contents of petition; copies served on all parties**—The petition shall explicitly state what exceptions are taken to the decision or procedure of the agency and what relief the petitioner seeks. Within ten days after the petition is filed with the court, the person seeking the review shall serve copies of the petition by registered mail, return receipt requested, upon the agency which rendered the decision, and upon all who were parties of record to the agency proceedings. Names and addresses of such parties shall be furnished to the petitioner by the agency upon request. Any party to the agency proceeding may become a party to the review proceedings by notifying the court within ten days after receipt of the copy of the petition.

§ 143-311. **Record filed by agency with clerk of superior court; contents of record; costs**—Within thirty days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the agency shall transmit to the reviewing

court the original or a certified copy of the entire record of the proceedings under review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceeding. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

§ 143-312. **Stay of board order**—At any time before or during the review proceeding the aggrieved person may apply to the reviewing court for an order staying the operation of the administrative decision pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper.

§ 143-313. **Procedure for taking newly discovered evidence**—At any time after petition for review has been filed, application may be made to the reviewing court for leave to present additional evidence. If the court is satisfied that the evidence is material to the issues, that it is not merely cumulative, and that it could not reasonably have been presented at the hearing before the agency, the court may remand the case to the agency where additional evidence shall be heard. The agency may then affirm or modify its findings of fact and its decision, and shall file with the reviewing court as a part of the record the additional evidence, together with the affirmation, or any modifications, of its findings or decision.

§ 143-314. **Review by the court without jury on the record**—The review of administrative decisions under this chapter shall be conducted by the court without a jury. The court shall hear oral arguments and receive written briefs, but shall take no evidence not offered at the hearing; except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken by the court; and except that where no record was made of the administrative proceeding or the record is inadequate, the judge in his discretion may hear the matter *de novo*.

§ 143-315. **Scope of review; power of court in disposing of the case**—The court may affirm the decision of the agency or

remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(a) in violation of constitutional provisions; or

(b) in excess of the statutory authority or jurisdiction of the agency; or

(c) made upon unlawful procedure; or

(d) affected by other error of law; or

(e) unsupported by competent, material, and substantial evidence in view of the entire record as submitted; or

(f) arbitrary or capricious.

If the court reverses or modifies the decision of the agency, the judge shall set out in writing, which writing shall become a part of the record, the reasons for such reversal or modification.

§ 143-316. **Appeal to supreme court; obtaining stay of court's decision**—Any party to the review proceeding, including the agency, may appeal to the supreme court from the final judgment of the superior court under rules of procedure applicable in other civil cases. The appealing party may apply to the superior court for a stay of its final determination, or a stay of the administrative decision, whichever shall be appropriate pending the outcome of the appeal to the supreme court.

MISCELLANEOUS LAWS

ALCOHOL EXEMPTION LAW

Section 18-19. **Sale by Druggists or Pharmacists**—It is unlawful for any druggist or pharmacist to sell, or otherwise dispose of for gain, any intoxicating liquor (1923, c. 1, s. 18; C. S. 3411 (r).)

Section 18-20. **Grain Alcohol for Use in Medicine or Surgery; Manufacture or Sale of Cider**—The provisions of this article shall not apply to grain alcohol, received by duly licensed physicians, druggists, dental surgeons, college, university, and state laboratories, and manufacturers of medicine, when intended to be used in compounding, mixing or preserving medicines or medical preparations, or for surgical purposes, when obtained as hereinbefore provided: *Provided, however*, that nothing contained in this act

ticle shall prohibit the importation into the state of North Carolina and the delivery and possession in the state for use in industry, manufacture, and arts of any denatured alcohol or other denatured spirits which are compounded and made in accordance with the formulae prescribed by acts of Congress of the United States and regulations made under authority thereof by the Treasury Department of the United States and the commissioner of internal revenue thereof, and which are not now subject to internal revenue tax levied by the Government of the United States: *Provided, further*, that this article shall not apply to wines and liquors required and used by hospitals or sanatoriums bona fide established and maintained for the treatment of patients addicted to the use of liquor, morphine, opium, cocaine, or other deleterious drugs, when the same are administered to patients actually in such hospitals or sanatoriums for treatment, and when the same are administered as an essential part of the particular system or method of treatment and exclusively by or under the direction of a duly licensed and registered physician of good moral character and standing: *Provided, further*, that this article shall not prohibit the manufacture or sale of cider or vinegar. (1923, c. 1. s. 19; C. S. 3411 (s).)

ABORTION AND KINDRED OFFENSES

Section 14-44. Using Drugs or Instruments to Destroy Unborn Child—If any person shall willfully administer to any woman, either pregnant or quick with child, or prescribe for any such woman, or advise or procure any such woman to take any medicine, drug or other substance whatever, or shall use or employ any instrument or other means with intent thereby to destroy such child, unless the same shall be necessary to preserve the life of the mother, he shall be guilty of a felony, and shall be imprisoned in the state's prison for not less than one year nor more than ten years, and be fined at the discretion of the court. (Rev., s. 3618; Code, s. 975; 1881, c. 351, s. 1; C. S. 4226.)

Section 14-45. Using Drugs or Instruments to Produce Miscarriage or Injure Pregnant Woman—If any person shall ad-

minister to any pregnant woman, or prescribe for any such woman, or advise and procure such woman to take any medicine, drug or anything whatsoever, with intent thereby to procure the miscarriage of such woman, or to injure or destroy such woman, or shall use any instrument or application for any of the above purposes, he shall be guilty of a felony, and shall be imprisoned in the jail or state's prison for not less than one year nor more than five years and shall be fined at the discretion of the court. (Rev., s. 3619; Code, s. 976; 1881, c. 351, s. 2; C. S. 4227.)

Section 14-46. Concealing Birth of Child—If any person shall, by secretly burying or otherwise disposing of the dead body of a new-born child, endeavor to conceal the birth of such child, such person shall be guilty of a felony, and punished by fine or imprisonment, or both, such imprisonment to be in the county jail or state's prison, at the discretion of the court: *Provided*, that the imprisonment in the state's prison shall in no case exceed a term of ten years: *Provided, further*, that nothing in this section shall be construed to prevent the mother, who may be guilty of the homicide of her child, from being prosecuted and punished for the same according to the principles of the common law. Any person aiding, counseling or abetting any woman in concealing the birth of her child shall be guilty of a misdemeanor. (Rev., s. 3623; Code, s. 1004; R. C., c. 34, s. 28; 1818, c. 985; 1883, c. 390; 21, Jac. I, c. 27. See 43 Geo. III, c. 58, s. 3; 9 Geo. IV, c. 31, s. 14; C. S. 4228.)

FRAUDULENT ADVERTISING LAW

Section 14-117. Fraudulent and Deceptive Advertising—It shall be unlawful for any person, firm, corporation or association, with intent to sell or in any wise to dispose of merchandise, securities, service or any other thing offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, to make public, disseminate, circulate or place before the public or cause

directly or indirectly to be made, published, disseminated, circulated or placed before the public in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill circular, pamphlet or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service or any other thing so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading: *Provided*, that such advertising shall be done willfully and with intent to

mislead. Any person who shall violate the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1915, c. 218; C. S. 4290.)

JURY DUTY EXEMPTION SERVICE

Section 9-19. (This section provides that practicing pharmacists, among other professions and vocations, may be exempt from jury duty upon application to the Clerk of Superior Court.)

Rules and Regulations of the North Carolina Board of Pharmacy

(1952 Revision)

The following rules, regulations, and by-laws have been adopted by the North Carolina Board of Pharmacy pursuant to the authority granted to the North Carolina Board of Pharmacy by the provisions of Article 4, of Chapter 90, section 90-57 of the General Statutes of the State of North Carolina.

Section 1. *Officers of the Board:* The members of the N. C. Board of Pharmacy shall annually elect as officers of the said Board one member to serve for a period of one year as President of the said Board, one member to serve for a period of one year as Vice-President of the said Board, and a person who may or may not be a member of the Board to serve for a period of one year as Secretary-Treasurer of the said Board, said election to be held in June of each year. In the event of the death, disability, or removal from the state or resignation of an officer of the said Board the remaining members shall elect a successor to serve the remaining portion of the unexpired term.

Section 2. *Meetings of the Board:* The North Carolina Board of Pharmacy shall meet at least once each year at a place to be designated by the Board for the purpose of examining candidates for license to practice pharmacy in North Carolina, and in addition shall meet when necessary on the third Tuesday in each month for the purpose of transacting business and holding hearings.

Section 3. *Quorums:* Before any action may be taken on any matter properly in the consideration of the N. C. Board of Pharmacy, at least three members must be in attendance at the place set and at the time set for the meeting of the said Board. A majority vote of the members in attendance is required before any motion is passed.

Section 4. *Location of Office:* The Board

shall maintain executive offices in the town of Chapel Hill, County of Orange, State of North Carolina.

Section 5. *General Definitions:*

1. "Board" means the North Carolina Board of Pharmacy.
2. "Secretary" means the Secretary-Treasurer of the North Carolina Board of Pharmacy.
3. "Vice-President" means the Vice-President of the North Carolina Board of Pharmacy.
4. "President" means the President of the North Carolina Board of Pharmacy.
5. "Drugs" means
 - (a) any article recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and
 - (b) any other article intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and
 - (c) any article, other than food, intended to affect the structure or any function of the body of man or other animal; and
 - (d) any article intended for use as a component of any article specified in clause (a), (b), or (c); but does not include devices or their components, parts or accessories.
6. "Poison" means any substance which when introduced into the system, either directly or by absorption, produces violent, morbid or fatal changes or which destroys living tissue with which it comes in contact.
7. "Pharmacy" or "Drug Store" means and includes every store or shop or other place where (1) drugs are dispensed, or

sold at retail, or displayed for sale at retail; or (2) where physicians' prescriptions are compounded; or (3) which has upon it or displayed within it, or affixed to or used in connection with it, a sign bearing the word or words "Pharmacist," "Pharmacy," "Apothecary," "Drug Store," "Druggist," "Drugs," "Medicines," "Medicine Store," "Drug-Sundries," "Remedies," or any word or words of similar or like import; or (4) any store or shop or other place, with respect to which any of the above words are used in any advertisement or business listing. Every Drug Store or Pharmacy must be managed or conducted by a registered pharmacist, and any store or shop which is without the services of a registered pharmacist shall cease all activities which are reserved to drug stores and pharmacies, and if the services of a registered pharmacist shall not be secured within a reasonable time all signs, symbols and words used to advertise the store or shop as a drug store or pharmacy shall be removed from the premises or from any other place such signs, symbols, or words might be found.

8. "Original Drug Store Permit" means a permit issued for:

(a) A new business.

(b) Transfer of an established business to a successor.

(c) Transfer of fifty percent or more of the ownership (as evidenced by interest listed on renewal application for previous years) of an established business to a successor.

(A drug store permit issued under all other conditions shall be considered as a renewal.)

9. "Person" means "person," "co-partnership," "association," "corporation," or other joint business enterprise.

10. "Pharmacist" or "Druggist" means any person licensed by the North Carolina Board of Pharmacy to practice the profession of Pharmacy in the State of North Carolina, and whose license is in good standing, except that as used in the proviso of section 90-61 "Pharmacist" means a person holding license to prac-

tice pharmacy in any of the United States, Puerto Rico and Alaska.

11. "Reputable School or College of Pharmacy" means a School of Pharmacy whose physical equipment, course of instruction, and teaching personnel conforms to the standards and specifications or the equivalent thereof required by the American Council on Pharmaceutical Education for Accreditation.

12. "Assistant Pharmacist" means any person licensed by the North Carolina Board of Pharmacy to practice the profession of pharmacy as an Assistant Pharmacist, whose license was issued prior to January 1, 1939 and which is in good standing.

13. "Apprentice Pharmacist" means any person duly registered as such by the North Carolina Board of Pharmacy and meeting the requirements of section 6.3 of these rules and regulations.

14. "Gross Immorality" means conduct, acts, and practices which are inconsistent with decency, good order, and propriety of professional or personal conduct, and which are hostile to the welfare of the general public. The word gross means willful and flagrant, rather than great or excessive.

15. "Person Addicted" means one who has acquired the habit of using spirituous liquors or narcotic or hypnotic drugs or other agents to such an extent as to deprive him of reasonable self-control.

16. "Village of 600" means a town or village whose population of permanent residents is not more than 600 persons. In determining the question of population the Board shall use as a standard the statistics as compiled by the Bureau of the Census, which figures shall be prima facie evidence of the actual population.

17. "Immediate Supervision" means that in any case where an unlicensed person is permitted to render pharmaceutical service, that is, the selling, dispensing, or compounding of physicians' prescriptions, or the selling of drugs, chemicals, poisons, or pharmaceutical preparations, a Licensed North Carolina Pharmacist must be physically present and render direct, personal, and visual oversight of

such service, and neither prior nor future instruction shall be sufficient. It shall not be immediate supervision where such service is rendered pursuant to telephone, or written instructions.

18. "Temporary Absence" means that interval during the period the store is open for business, when the registered pharmacist is out of the store but within call and ready to assume direct supervision of said pharmacy. A registered Assistant Pharmacist may have charge of a retail drug store during such temporary absence of the registered pharmacist, and exercise his right to do what the law and certificate confer upon him.

19. "Non Poisonous Domestic Remedies" mean:

Alum
Aromatic Spirit of Ammonia
Aspirin Tablets
Borax
Bicarb. of Soda
Calomel Tablets
Castor Oil
Comp. Carth. Pills
Copperas
Cream of Tartar
Dist. Ext. Witch Hazel
Epsom Salt
Harlem Oil
Iodine 2%
Gum Asafetida
Gum Camphor
Glycerin
Milk of Mag.
Mineral Oil
Peroxide of Hydrogen
Petrol. Jelly
Saltpetre
Senna Leaves
Spirit-Terpentine
Spirit-Camphor
Sweet Oil
Sulfur
Sulphate of Quinine
Cough remedies which contain no poisonous or narcotic drugs.
Exempt narcotic preparations, provided the dealer is registered under the Harrison Narcotic Law.

Section 6. *Examinations:*

1. Application: All applications for exami-

nation shall be made on forms provided by the Board, and filed with the Board 30 days prior to the date of the examination, and accompanied by the required fee of \$10.00.

2. *Age:* The applicant must be twenty-one (21) years of age. Proof of age must be shown by birth certificate, Biblical records or other acceptable proof.

3. *Experience in Pharmacy:* The applicant must show that he has received four years of experience in pharmacy under the instruction of a licensed pharmacist, from which the actual time in attendance at a reputable school or college of pharmacy, not to exceed three years, may be deducted. Experience gained prior to the applicant's sixteenth birthday or concurrent with school attendance is not acceptable as fulfilling any part of the experience requirement. Attendance at a non-pharmacy college for which credit was given toward the fulfillment of the requirements for a degree in pharmacy is acceptable in fulfilling the experience requirement to the same extent that such credit was given toward the degree in pharmacy. Proper certification must be made of any experience claimed by the applicant prior to January 1, 1949. A form shall be provided by the Board for this purpose, which form must be executed by the pharmacist under whom the experience was gained. In cases where the supervising pharmacist has since died, affidavits on special forms furnished by the Board shall be executed by three persons having intimate knowledge of the experience so claimed. Experience in pharmacy, not to exceed six months, gained while serving in the Armed Forces shall be deemed as fulfilling the requirements of the law, when such experience was obtained under the supervision of a licensed pharmacist, provided proper certification of such experience is furnished to the Board. All practical pharmacy experience received subsequent to January 1, 1949 must have been gained pursuant to Apprentice Pharmacist registration and must meet the following minimum requirements:

(a) The term "year" as used in this

section to designate the quantitative standard for practical experience shall mean fifty-two average work weeks of apprenticeship training acquired under the supervision of a registered pharmacist.

(b) The pharmacy owner or registered pharmacists supervising the practical experience of an applicant for registration must notify the Board of Pharmacy whenever an applicant for registration begins employment under their supervision and whenever an applicant leaves their employ.

(c) Persons working under the supervision of registered pharmacists and expecting to qualify for the registered pharmacist examination must notify the Board of Pharmacy of the beginning and end of their employment under the supervision of a registered pharmacist within five days of the beginning or ending of such employment.

(d) The Board of Pharmacy shall not allow credit for claims of practical experience required under the pharmacy laws, unless such claims can be corroborated by records on file in the Board office showing the beginning and ending of the practical experience claimed as supplied by the applicant during his training period and by the pharmacist who supervised the practical experience during the training period.

(e) Practical experience shall be credited only when it has been obtained in a pharmacy acceptable to the Board of Pharmacy for that purpose.

(f) The term "supervision" as used in connection with the practical experience requirement shall mean that in the pharmacy where practical experience is being obtained a registered pharmacist supervising practical experience shall be in personal contact with and actually giving instruction to the person obtaining practical experience during the entire period of such experience.

(g) A pharmacy acceptable to the Board of Pharmacy as a proper place to obtain practical experience shall conform to the best traditions of pharmacy in the state. It shall have available all necessary equipment for professional service, neces-

sary reference works, in addition to the official standards, and current professional journals, and shall meet the following minimum standards:

(1) It must be a pharmacy operating under a permit from the Board of Pharmacy in states where annual permits are required. In states where there is no permit law, the pharmacy must be operated at all times under the supervision of a registered pharmacist and must have signified its willingness to train apprentices or to employ persons desiring to obtain practical experience in accordance with the state pharmacy laws.

(2) A pharmacy acceptable to the Board for practical experience must have a clear record with respect to the observance of Federal, State and municipal laws, and ordinances governing any phase of activity in which it is engaged.

(3) The pharmacy owner and the registered pharmacists supervising the practical experience of applicants for registration must agree to abide by the Code of Ethics of the American Pharmaceutical Association.

(h) The individual obtaining practical experience shall keep a notebook properly certified to by the pharmacist supervising the practical experience covering the details of his practical training and this notebook shall be submitted as a part of the application for the Board examination.

The Board may accept training in pharmacy gained in another state pursuant to apprentice registration in this or another state if the Board is satisfied that such training is of the same quality and quantity as required in this state. All experience in pharmacy as referred to in this section, whether received prior or subsequent to January 1, 1949, shall be predominantly related to the selling of drugs, medicines, and medical supplies compounding prescriptions, preparing pharmaceutical preparations, and keeping records and making reports required under the State and Federal statutes.

4. *Education:* All applicants except those

specifically excluded by GS 90-61 shall furnish satisfactory evidence that he has been graduated from a reputable school or college of pharmacy.

5. *Content and Scoring*: Examination shall be plainly written and divided into five heads, namely:

(a) *Materia Medica, Posology and Toxicology.*

(b) *Theoretical Pharmacy.*

(c) *Practical Pharmacy*, including laboratory work, prescription criticism and reading, with identification of drugs and such other reasonable tests of the applicant's ability to translate his technical knowledge into terms of actual practice as the Board may see fit to give.

(d) *Pharmaceutical Chemistry.*

(e) *Pharmaceutical and Chemical Mathematics.*

For the purpose of grading or rating, answers to questions shall be valued by marks or points based on their importance, as determined by the judgment of the examiner.

A general average of 75% with not less than 60% on any branch, except practical pharmacy, wherein not less than 75% is required, shall be necessary for a candidate to pass the examination.

Applicants making a general average of 75% in the written examination, but failing to make 75% in the practical examination, must re-take and pass the latter before license will be granted.

Should a candidate average 73% or more on all branches of the examination taken, but not average as much as 75%, and make a score of below 70% and above 60% on not more than one subject, the Board shall review all papers of said candidate.

6. *Rules*: Candidates must not communicate in any way with another; nor give, receive or use any means of information, except where specifically directed by the examiner.

Candidates taking the examination must follow the instructions given for each examination. Incorrect spelling, grammar or illegible handwriting may affect the final rating. Unless otherwise instructed three hours time shall be allotted

in which to complete each division of the examination.

7. *Exceptions*: Candidates who are found to be eligible for admission to the examinations in all respects except that of practical pharmacy experience or age or both, may be admitted to all divisions of the examinations except the examination in practical pharmacy. Such candidate may later take the practical examination when the experience and/or age requirement has been satisfied, upon the payment of an additional examination fee of \$5.00. Successful passage of any portion of the examinations without having passed the entire examination and being issued a license, entitles the candidate to no recognition under the law to practice pharmacy.

Section 7. *Licenses and Permits*:

1. *Drug Store Permits*: Application for drug store permits whether original or renewal shall be made upon forms provided by the Board. The Board will not issue any original or annual renewal drug store permit until an investigation, and in the case of an application for an original drug store permit a personal appearance before the Board by the owner and pharmacist in charge, shall completely satisfy the Board that:

(a) Adequate qualified personnel has been secured by the management of the store to properly render pharmaceutical service in the manner prescribed by the law; and

(b) Such personnel will be maintained during the period for which the permit is issued; and

(c) Such store has all of the following technical equipment:

Graduates

Capable of accurately measuring volumes from one minim to at least one pint and from 1 cc to at least 500 cc

Mortars and Pestles

1—2 Ounce, glass or porcelain

1—8 Ounce, glass or porcelain

2—Wedgwood, assorted sizes

Glass Funnels

1—2 Ounce

1—16 Ounce

Stirring Rods

2—Glass, assorted sizes, glass or rubber
Pill Tile and Ointment Slab

1—Pill Tile

1—Ointment Slab

Balances

For bulk, medium and light weighing,
at least one of which must be sensitive
to 1/10 grain

Weights

1—Set Apothecaries, 1/2 grain to 2
drams

1—Set Metric, 1 mgm to 100 gm

1—Set Avoirdupois, 1/4 ounce to 1
pound

Sieves

1—Set Official sieves or flour sifter

Suitable facilities for recording and
filing prescriptions

Spatulas

Stainless Steel, at least three assorted
sizes

Non-Metallic, at least two assorted
sizes

Usable Supplies (Adequate Supply of Each)

Prescription Bottles, 1/2 to 32 ozs.

Dropper Bottles, 4 drams to 2 ozs.

Pill and Powder Boxes, assorted sizes.

or Glass Tablet and Liquid Vials

Empty Capsules No. 00 to 5

Powder Paper

Powder Cartons or Jars, assorted

Filter Paper, assorted

Ointment Jars, assorted

Labels

Books

Latest edition of the U. S. P. and N. F.
and supplements, or a standard com-
mentary on these two publications

Poison Register

Exempt Narcotic Register

Heating Apparatus

Tripod & Bunsen Burner, or Alcohol
Lamp, or Electric Hot Plate

Narcotic Drug Locker

(d) The store is equipped with proper
sanitary appliances and the premises are
kept in a clean and orderly manner.

2. Before any permits or any renewal shall
be issued pursuant to G.S. 90-71 for a
drug store to be operated in a town of
less than 600 population it must be shown

that drug store is located in the same
town as the residence of the physician
to whom the permit is to be issued.

3. From and after February 16, 1948, the
Board shall issue no original permits
to physicians to operate drug stores in
towns of less than 600 population but will
continue to renew the permits to those
now in operation.

4. Any person who absents himself from
the practice of pharmacy for a period
of five years or more shall be required
to appear before the Board for instruc-
tion regarding any changes in the laws
governing the practice of pharmacy and
the distribution of drugs and for a re-
view of any changes which have taken
place affecting the general practice of
pharmacy.

Section 8. Reciprocal Licensure:

1. Eligibility for reciprocal licensure is con-
tingent upon the applicant's qualifica-
tions at the time of licensure by exami-
nation in the State from which he applies,
which qualifications were not lower than
those required for licensure in this State
at the time of the applicant's licensure
in another State.
2. The privilege of application for reciprocal
licensure shall be extended to licentiates
of all states which extend the same privi-
lege to licentiates of this state.
3. All reciprocal exchange of pharmaceu-
tical licensure to this state may be ef-
fected only through the National Associa-
tion of Boards of Pharmacy, 77 W.
Washington St., Chicago 2, Illinois, and
on official application forms provided by
the National Association of Boards of
Pharmacy.
4. Applications for reciprocal registration
to this state are subject to the require-
ment of the By-laws, rules and regula-
tions of the National Association of
Boards of Pharmacy.
5. Candidates for reciprocal registration
who are deemed eligible for reciprocal
licensure in all respects except that of
having practiced one year under legal
conditions since registration by examina-
tion as required by Art. II(f) of the
By-laws of the N. A. B. P. may be ac-
cepted for reciprocal licensure if such

applicant shall successfully pass an examination in practical pharmacy given by this Board pursuant to the exception contained in Article II(e) of the N. A. B. P. By-laws.

Persons desiring to apply for reciprocal registration may secure information and application blanks from any of the following sources:

(a) P. H. Costello, Secretary, National Association of Boards of Pharmacy, 77 W. Washington St., Chicago 2, Ill.

(b) Secretary of Board of state in which applicant is registered by examination.

(c) Secretary of North Carolina Board of Pharmacy, P. O. Box 471, Chapel Hill, N. C.

6. The Board in its discretion may grant reciprocal licensure to an applicant when such applicant has taken and failed to

pass the examinations of the North Carolina Board of Pharmacy.

7. All applicants for reciprocal licensure shall meet with the Board at a designated time and place for a personal interview in considering the application.

Section 9. *Disciplinary Actions:* Before any person shall be indicted in any court in this state for a violation of the laws, regulating the practice of pharmacy, he shall be given an opportunity to appear before the Board at one of its regular meetings to show cause why he should not be prosecuted for the alleged violation. The person appearing at these meetings shall have the right to be represented by counsel if he so desires and shall have the right to introduce any matter pertaining to the alleged violation either by himself or by others.

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